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ISSN 1180-5218

## Legislative Assembly of Ontario

First Session, 39<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 39<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 12 December 2007

# Journal des débats (Hansard)

Mercredi 12 décembre 2007

**Standing committee on  
general government**

Organization

**Comité permanent des  
affaires gouvernementales**

Organisation



Chair: Linda Jeffrey  
Clerk: Trevor Day

Présidente : Linda Jeffrey  
Greffier : Trevor Day



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 12 December 2007

Mercredi 12 décembre 2007

*The committee met at 1534 in room 151.*

## ELECTION OF CHAIR

**The Clerk of the Committee (Mr. Trevor Day):** Honourable members, it is my duty to call upon you to elect a Chair. Any nominations?

**Mr. Rosario Marchese:** I nominate Linda Jeffrey.

**The Clerk of the Committee (Mr. Trevor Day):** Mr. Marchese has nominated Mrs. Jeffrey. Do you accept the nomination?

**Mrs. Linda Jeffrey:** I do.

**The Clerk of the Committee (Mr. Trevor Day):** Any further nominations? There being no further nominations, I declare nominations closed and Mrs. Jeffrey as Chair.

## ELECTION OF VICE-CHAIR

**The Chair (Mrs. Linda Jeffrey):** Thank you, committee. We'll now have the nominations for Vice-Chair. Any nominations?

**Mrs. Carol Mitchell:** I would nominate David Oraziatti.

**The Chair (Mrs. Linda Jeffrey):** Do you accept?

**Mr. David Oraziatti:** I accept.

**The Chair (Mrs. Linda Jeffrey):** Any further nominations? I declare nominations closed. Congratulations, Mr. Oraziatti.

## APPOINTMENT OF SUBCOMMITTEE

**Mr. Vic Dhillon:** I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee;

That the presence of all members of the subcommittee is necessary to constitute a meeting; and

That the subcommittee be composed of the following members: The Chair as chair, Mr. Marchese, Mrs. Savoline and Mrs. Mitchell; and that substitution be permitted on the subcommittee.

**The Chair (Mrs. Linda Jeffrey):** Any comments or questions? Seeing none, I will now put the question. All those in favour of the motion? All those opposed? That's carried. Congratulations, subcommittee members.

**Mr. Paul Miller:** Madam Chair, I'm here today—as you know, my Bill 6 passed second reading in the House the other day. I'm asking this committee and the Chair if they could ask the subcommittee to meet to consider recommending dates to set up for the bill to be addressed.

**Mr. Rosario Marchese:** Which bill?

**Mr. Paul Miller:** Bill 6.

**The Chair (Mrs. Linda Jeffrey):** We'll take it under advisement, and the new subcommittee members will have that conversation as to the time that they could entertain that request.

**Mr. Paul Miller:** Thank you, Madam Chair.

**The Chair (Mrs. Linda Jeffrey):** We're adjourned. Good committee meeting. Thank you.

*The committee adjourned at 1536.*



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### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### **Chair / Présidente**

Mrs. Linda Jeffrey (Brampton–Springdale L)

#### **Vice-Chair / Vice-Présidente**

Mrs. Carol Mitchell (Huron–Bruce L)

Mr. Robert Bailey (Sarnia–Lambton PC)  
Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)  
Mrs. Linda Jeffrey (Brampton–Springdale L)  
Mr. Kuldip Kular (Bramalea–Gore–Malton L)  
Mr. Rosario Marchese (Trinity–Spadina ND)  
Mr. Bill Mauro (Thunder Bay–Atikokan L)  
Mrs. Carol Mitchell (Huron–Bruce L)  
Mr. David Oraziotti (Sault Ste. Marie L)  
Mrs. Joyce Savoline (Burlington PC)

#### **Substitutions / Membres remplaçants**

Mr. Vic Dhillon (Brampton West / Brampton-Ouest L)

#### **Also taking part / Autres participants et participantes**

Mr. Paul Miller (Hamilton East–Stoney Creek / Hamilton-Est–Stoney Creek ND)

#### **Clerk / Greffier**

Mr. Trevor Day

#### **Staff / Personnel**

Mr. Ray McLellan, research officer,  
Research and Information Services



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Première session, 39<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 31 March 2008

# Journal des débats (Hansard)

Lundi 31 mars 2008

Standing committee on  
general government

Subcommittee report

Comité permanent des  
affaires gouvernementales

Rapport du sous-committee





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STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 31 March 2008

Lundi 31 mars 2008

*The committee met at 1541 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mrs. Linda Jeffrey):** I call the meeting of the standing committee on general government to order. We have before us the report of the subcommittee on committee business. Mr. Miller, would you like to read that into the record?

**Mr. Paul Miller:** Thank you, Madam Chair. I would like to move the advisory committee to the main committee report.

Your subcommittee met on Tuesday, March 25, 2008, to consider the method of proceeding on Bill 6, An Act to amend the Employment Standards Act, 2000 to provide for an employee wage security program, and recommends the following:

(1) That the committee meet in Toronto on April 14 and 16, 2008, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on Bill 6 in the Ontario edition of the *Globe and Mail* for one day and that an advertisement also be placed on the Ontario parliamentary channel and the Legislative Assembly website.

(3) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 5 p.m. on Tuesday, April 8, 2008.

(4) That, in the event all witnesses cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear by 6 p.m. on Tuesday, April 8, 2008.

(5) That the members of subcommittee prioritize and return the list of requests to appear by 4 p.m. on Wednesday, April 9, 2008.

(6) That groups and individuals be offered 15 minutes for their presentation. This time is to include questions from the committee.

(7) That the deadline for written submissions be 5 p.m. on Wednesday, April 16, 2008.

(8) That the research officer prepare a response to Mr. Miller's (Hamilton East–Stoney Creek) research request by Monday, April 14, 2008.

Madam Chair, I'll be happy to field any questions, if necessary, on this.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Mr. Miller. Any debate on this issue?

**Mrs. Carol Mitchell:** As I stated at the subcommittee meeting, in the past how private members' business has been dealt with—protocol is that it be dealt with through the leaders' offices and then the process be established. I just restate my concern that the private members' business has come forward in this manner. I did address that with you, Mr. Miller, at the time. In the past that has been how private members' business has come forward.

**The Chair (Mrs. Linda Jeffrey):** Mr. Miller.

**Mr. Paul Miller:** Yes thanks, Madam Chair. Thank you for your question. It's my understanding—I did do some homework on this, and unless I'm being misled, my answer from the powers-that-be was that it's not necessary for the House leaders to deal with this. The subcommittee can recommend to the main committee, without having their involvement, with the busy schedule of the House leaders, on subcommittee recommendations. That is my understanding; obviously, it conflicts with your understanding.

**Mrs. Carol Mitchell:** Just to be clear, Mr. Miller, as we stated at the subcommittee, that was your comment at that time too.

**Mr. Paul Miller:** Yes, and I—

**Mrs. Carol Mitchell:** That's correct, and my comment at that time was that it is the protocol that has been followed.

**Mr. Paul Miller:** With all due respect to the member—

**The Chair (Mrs. Linda Jeffrey):** Can you guys go through the Chair, possibly?

**Mr. Paul Miller:** Sorry, through the Chair; I apologize. We're talking directly here.

**The Chair (Mrs. Linda Jeffrey):** Mr. Miller.

**Mr. Paul Miller:** With all due respect to the member, and no disrespect, I think that's a minute problem. I think it's misdirecting the whole purpose of what we're here for. Frankly, I think it's a very small issue that, obviously, we don't agree on, and I think we can move on to bigger and better things.

**Mr. Peter Kormos:** It's an interesting scenario when a committee has before it but private members' public business, because, of course, another convention that is increasingly notable in its contravention, rather than in terms of it being complied with, is the convention that government business takes priority over private members' public business. Over the course of the last several years, we've seen several instances where the committee



has exercised its power to order its own business. Again, that's fair enough. That was a hard and fast convention in the past, and it's been weakened somewhat simply by practice.

Committees have their own process and control over their own process, and I think that's an incredibly important thing. I hear the member when she explains her understanding of how things work or are to work, but it's only because this committee's in the peculiar circumstance of having no other business. In fact, what a government will do from time to time, if the committee is risking having to entertain private members' public business, is refer bills to that committee. Again, it's just some of the gamesmanship, if you will, that's played here at Queen's Park. We've seen that happen, too—in other words, the government, when it refers a bill to committee, doesn't follow the directory at the back of the standing orders indicating which bills go to which committee. So governments can and have done that. They've effectively blocked private members' public business.

With respect to the argument put forward, it's not been the convention that House leaders or leaders' offices deal with committee business. The committee is entitled and authorized to order its own business. What does happen from time to time, especially at the end of a session, is, of course, the notorious horse-trading over respective bills. In other words, it's agreed between House leaders that X number of Liberal or government members' bills will be advanced, X number of official opposition bills will be advanced or X number of NDP or third party bills will be advanced. That's simply what House leaders do engage in and have engaged in for a good chunk of time.

Again, and Mr. Miller knows this full well, if the government doesn't agree with the subcommittee report, it'll vote against it. That's fine, too. That's within the government's power to do. It is, however, unfortunate because it means that the committee is relinquishing some of its very interesting power. It is, I say, a double-edged sword. The committee is idle. The committee has time on its hands. The committee doesn't have, as I understand it, an agenda of government business, and if it did, it acquired it only very recently, but I don't expect that to be the case. That's why the convention was that government business blocks private members' public business: because you don't want private members' public business to take priority over government business, and there's a rationale for that, and I understand that.

So I just want to put this in the context of my 20 years here. I was young, very good-looking, very slim and had colour in my hair 20 years ago.

**Mrs. Joyce Savoline:** I saw you in the Sun newspaper.

**Mr. Peter Kormos:** I've got the photo up on my wall.

I just want to put this in that context—and I do find it a regrettable thing. Again, the government members will be doing what they're expected to do, and that's what they're to do, but I'm really loath to see a committee relinquish its innate authority.

You, as Chair, for instance, have the power and the responsibility to call subcommittee meetings, and you use your discretion on that. You have to exercise your discretion in a judicious way, in a responsible way and in a non-partisan way—similarly, the committee's control of its own process. I know that, for one, in terms of my position with respect to, let's say, days of committee hearings and how the committee advertises it, I've been inclined to argue on behalf of, again, committees controlling that part of the process. In other words, let's not sit down as House leaders and tell the committee that they're going to sit for three days or two days; let the committee make that decision—and the perfect example is because you want to see how much interest there is in a bill. There may be a whole lot of interest, there may be none.

Again, at the end of the day, the government controls the committee process because it has a majority on the committee. That's the nature of the beast, short of a minority government.

Thank you very kindly. I appreciate that chance to, perhaps, illuminate on this.

**The Chair (Mrs. Linda Jeffrey):** Further discussion?

**Mr. Paul Miller:** I'd just like to bring this point forward to the committee: The government, in its infinite wisdom, decided to pass this on to committee level, passing on the second reading. My understanding is that this government would also be wise enough to allow the public to have their say with hearings and move on with this. To stop it at this point is really a shot in the arm for the democratic process, in my humble opinion. I think that we should at least allow the people to have their day in court, so to speak. There are a lot of interested parties in this, ranging from unions to non-unions to people who don't have situations that can be protected. So I'm hoping that this committee would at least allow the people to get to the level of having their say.

**The Chair (Mrs. Linda Jeffrey):** Mrs. Savoline.

**Mrs. Joyce Savoline:** I need to clarify a couple of things. It's my very first committee meeting, and I need to understand some things.

I understand what member Mitchell is saying about there having been a protocol. But what I need to understand is, is it legitimate for this committee to consider this business, or are we waiving some rules?

**The Chair (Mrs. Linda Jeffrey):** As I understand it, a committee is in charge of its own business.

**Mrs. Joyce Savoline:** So if there is a will on this committee's part to consider this private member's bill, we could actually vote in favour of doing it; and given that we have no other business at this point in time to consider, it would behoove us to move the business of the public interest forward.

**The Chair (Mrs. Linda Jeffrey):** If that's a question, the committee can make that choice.

**Mrs. Joyce Savoline:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Any other discussion?

**Mrs. Carol Mitchell:** Just to add—and I strongly want to reinforce this. You know what my comments are, but how we vote today does not reflect the private member's bill moving forward and how it would be voted on. I am encouraged by the democratic process as we see it coming forward, in all venues. But at this time, when the protocols have been established—we are aware of them, and we understand the jurisdictions of the committees. But we also understand that it is incumbent upon the House leaders to ensure a steady movement of legislation going forward.

So I thank you. That will be my final comment on this.

**The Chair (Mrs. Linda Jeffrey):** Mr. Miller.

**Mr. Paul Miller:** I'm not sure I understand where the member was going with the protocol. I believe we established that the protocol is not being damaged by this process, and we're all within our legal rights. I don't want to sound sarcastic, but I don't want to masquerade this very important bill with the thought of protocol, when we're not breaking any protocol. We're doing the democratic thing, and I hope this government is going to move ahead with the democratic process and allow people to at least have their hearings. It would be a travesty if they didn't vote in favour of moving ahead

with this after they passed it on second reading. I'm confused.

**The Chair (Mrs. Linda Jeffrey):** Any further discussion? Seeing none, Mr. Miller has moved—

**Mr. Peter Kormos:** Recorded vote.

**Mr. Paul Miller:** Recorded vote, please.

**The Chair (Mrs. Linda Jeffrey):** I can see you're being coached. I was going to get there.

Mr. Miller has moved the report of the subcommittee on committee business. A recorded vote has been requested.

#### Ayes

Miller, Savoline.

#### Nays

Brownell, Kular, Mitchell, Oraziatti.

**The Chair (Mrs. Linda Jeffrey):** The motion is lost.

If we have no more business of the committee, I thank you. This meeting is adjourned.

*The committee adjourned at 1554.*









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#### **Vice-Chair / Vice-Présidente**

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## Assemblée législative de l'Ontario

Première session, 39<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 26 May 2008

# Journal des débats (Hansard)

Lundi 26 mai 2008

## Standing Committee on General Government

Payday Loans Act, 2008

## Comité permanent des affaires gouvernementales

Loi de 2008 concernant  
les prêts sur salaire

Chair: Linda Jeffrey  
Clerk: Trevor Day

Présidente : Linda Jeffrey  
Greffier : Trevor Day



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STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 26 May 2008

Lundi 26 mai 2008

*The committee met at 1404 in room 228.*

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The Standing Committee on General Government is called to order. We're here to discuss Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts.

## SUBCOMMITTEE REPORT

**The Chair (Mrs. Linda Jeffrey):** Could someone read the report of the subcommittee on committee business into the record?

**Ms. Cheri DiNovo:** On a point of order, Madam Chair: I'm concerned that this is not televised. I would like to see it televised. I think the more transparency, the better in government, and certainly this is an issue that touches the lives of all Ontarians in one way, shape or form. So I would like to move that we move to a room that can be as transparent as possible, and that would be a room that's televised.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, I don't think you can move this as a point of order, but you could change the subcommittee minutes, so once they're read into the record we have an amendment, and then at that point—okay?

**Ms. Cheri DiNovo:** Okay.

**The Chair (Mrs. Linda Jeffrey):** Ms. Mitchell.

**Mrs. Carol Mitchell:** Your subcommittee met on Thursday, May 8, 2008, to consider the method of proceeding on Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts, and recommends the following:

(1) That the committee meet in Toronto on Monday, May 26, Wednesday, May 28, Monday, June 2, and Wednesday, June 4, 2008, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the Ontario English and French dailies and French weeklies where applicable.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel and the Legislative Assembly website.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Friday, May 16, 2008.

(5) That groups and individuals be offered 15 minutes for their presentation. This time is to include questions from the committee.

(6) That, in the event all witnesses cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear by 2 p.m. on Friday, May 16, 2008.

(7) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on Tuesday, May 20, 2008.

(8) That the research officer provide the committee with background information prior to the commencement of public hearings.

(9) That the Minister of Government and Consumer Services be invited to appear before the committee to make a presentation of up to 15 minutes, followed by five minutes for each caucus to make a statement or ask questions.

(10) That the deadline for written submissions be 12 noon on Wednesday, June 4, 2008.

(11) That, for administrative purposes, proposed amendments be filed with the committee clerk by 5 p.m. on Thursday, June 5, 2008.

(12) That the committee meet for the purpose of clause-by-clause consideration of the bill on Monday, June 9, and Wednesday, June 11, 2008, if required.

(13) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**Mrs. Joyce Savoline:** I have an amendment.

I move that, in paragraph 1, "Monday, June 2, and Wednesday, June 4, 2008," be struck out; in paragraph 11, "June 5" be struck out and replaced with "May 29"; and in paragraph 12, "Monday, June 9, and Wednesday, June 11," be struck out and replaced with "Monday, June 2, and Wednesday, June 4."

I've moved this amendment because we were safeguarding and allowing for four days of hearings. We have not had that kind of take-up with delegations and two days will be enough. That's why I'm proposing those changes.

**The Chair (Mrs. Linda Jeffrey):** Any discussion on the amendment? Seeing none, all those in favour of the amendment? That's carried.

**Ms. Cheri DiNovo:** Again pursuant to the report of the subcommittee, I just draw this committee's attention



to the fact that the phrase “public hearings” is reiterated a number of times in these. One would assume that “public” means “public”; that is to say, as transparent as possible. We certainly have here at Queen’s Park the means at our disposal to televise this. I think that interested parties would like to see it televised. Certainly I expected that it was televised. I was surprised, coming here today, to learn that it was not. So, again, I would hope that we can change rooms as soon as possible, hopefully for today, or else convene at another time when we can be transparent and accountable to the public which elected us.

**The Chair (Mrs. Linda Jeffrey):** Further debate on this issue?

I’m told by the clerk that this is our regular room and that there has been some construction in the room that is televised. The only day we would have available in that room would be Monday. So there is the possibility, but it would only be one day of the hearings.

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** On Wednesday, another committee has it—estimates, I believe.

Ms. DiNovo, did you want to comment on that further?

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**Ms. Cheri DiNovo:** I don’t think that’s a response. Again, I know this is being Hansarded, but certainly I think the issue warrants scrutiny, it warrants transparency, it warrants response from duly elected members to their constituents, and they want to see what’s going on. Not everybody is able—particularly some of those who are targeted by payday lenders—to access Hansard, and some of them are not able to read, in English or in French, the words of Hansard. Again, I think we want transparency here. I assume that I’m going to be outvoted, but I certainly want to go on record as saying that this is not a truly public hearing, that this is not a truly transparent hearing, and until it is, just like the other aspects of life at Queen’s Park, I don’t think this has the validity that it should have.

**The Chair (Mrs. Linda Jeffrey):** Further debate?

**Mrs. Carol Mitchell:** I do want to thank Ms. DiNovo for her comments, being a member of the subcommittee, and I understand that you felt that it was, but we’re here today. The public has certainly been duly notified. We agreed upon it. We have an amendment that is coming forward, the changes that reflect the conversation we had at the meeting. What I’ve heard is that if there was an opportunity, we would move to a different venue, but that we’d go forward today. That’s what I heard today.

I believe we have done everything within our power to notify the public. We also, as representatives from each party, have agreed on a process that we were to go forward with, so I support that and let’s continue the day.

**Mrs. Joyce Savoline:** Having come from municipal politics, where “public” really means public and we’re very close to the people, I understand where the member is coming from. In principle, I support everything the member is saying. I feel that from here on in, when we

meet in subcommittee and decide on when the dates are, we should also discuss which room the hearings will be held in so that we have an understanding of whether or not we have the availability of the televised committee. I would just like the record to show that on principle I totally agree with Ms. DiNovo that we here at Queen’s Park have to be as transparent and as accountable as we expect the people that we’re speaking with today to be. Those are my comments.

**The Chair (Mrs. Linda Jeffrey):** Just for clarification, the issue of the location isn’t a subcommittee issue that is up for debate and that we negotiate. The committee rooms are set, so that would be something at a higher level. Just for interest’s sake, for the future, they are set before we begin the committee hearings, so it is something that you can raise at another level, but it isn’t something that’s on a list, as I, as Chair, would raise for your clarification.

**Mrs. Joyce Savoline:** Then I will raise it at a higher level, because I think it’s extremely important.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Ms. DiNovo.

**Ms. Cheri DiNovo:** I would argue that it is part of the subcommittee discussion because you’ve said “holding public hearings.” We understand public hearings at Queen’s Park to be exactly that: public, to be televised and Hansarded. Other committees that I’ve sat on have been televised, so this should certainly be no exception. As I said, I was operating under the understanding that it would be televised and that it would be truly public. Certainly we have options here, and the same could be said for question period or any of the activities of this place: that they be transparent and accountable.

I thank Mrs. Savoline for her support on this. Certainly I want to have this recorded: that this government, if they do vote me down on this, is voting for a series of committee appearances and hearings that are not truly public.

**Mr. Jim Brownell:** Madam Chair, I’d like to ask: Is there a complete Hansard recording of every comment made in this room today?

**The Chair (Mrs. Linda Jeffrey):** Yes, there is.

**Mr. Jim Brownell:** I think that’s quite public, and I see no reason why we shouldn’t just move on. I think we’ve debated this enough. This is a public forum. The doors are open to people to come in, make presentations, and people come in and sit in the gallery if they want, and it is recorded, so they can hear it.

**Ms. Lisa MacLeod:** Not to belabour the point, but Ms. DiNovo does make a point. We may not agree on every aspect of this piece of legislation, but she does make a point for openness and transparency. I think she does make a point that some of the underprivileged people who may access this type of service may not be able to access a computer and may not have the literacy skills to review the Hansard.

I might suggest a compromise that we perhaps do consider moving our Wednesday committee to Monday, if it’s possible, and perhaps Hansard can provide us with an



audio clip that Ms. DiNovo could put on her website or provide to her supporters. Let's try to work together and just move on, because I think many of us would like to hear Minister McMeekin and the deputants at some point today.

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** I'm being told that Wednesday is already being taken up by estimates in that committee room. That doesn't mean—

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** You said "Wednesday."

*Interjection.*

**Ms. Lisa MacLeod:** Can we move that to Monday, as you suggested? Did I hear that correctly?

**The Chair (Mrs. Linda Jeffrey):** It's clause-by-clause at that point because we didn't get enough requests to be at the hearing. That's a friendly amendment, I know, but the mover has moved the amendment that we are discussing now, which is that we move right now to another location that's televised. That's the motion on the floor.

**Mr. Bill Mauro:** Madam Chair, was this issue raised previously at subcommittee or, as Chair, is this the first time you've heard about this request?

**The Chair (Mrs. Linda Jeffrey):** It's the first time I've heard of this request.

**Mr. Bill Mauro:** Thank you very much.

**Ms. Cheri DiNovo:** It would be the first time that she's heard of it, because I assumed that public hearings would be public hearings and would be televised. So when I came here, much to my concern I discovered that they're not truly public and they're not being televised. That's why I'm raising it. If it didn't say "public hearings," you wouldn't be hearing from me.

**Mrs. Carol Mitchell:** Just for the record, I want to give the opportunity for the clerk to speak to it. The process has not changed at all. This is how the committees go forward.

**The Clerk of the Committee (Mr. Trevor Day):** Each committee is assigned a room, a set of rooms. Ours is this room for most hearings. Unless we look into it otherwise and check with another committee to say, "We want your room," or "Are you in that room?" this is the room we will usually be in.

**Mrs. Carol Mitchell:** So a point of clarification is that in fact it has been dealt with the same as every other bill coming forward for public hearings.

**The Clerk of the Committee (Mr. Trevor Day):** Yes.

**The Chair (Mrs. Linda Jeffrey):** Any further debate on the motion?

**Ms. Cheri DiNovo:** With all due respect, I've sat in on a number of bills, a number of committees, that have been televised and I assumed, this being public, that this would be one of them, and again, for very specific reasons: that a large number of people who are affected by this bill are those who will not be able to access Hansard by computer, who can watch on television a lot

more easily than they can read, particularly in a language that might be foreign to them. So again, to make it truly public, truly transparent, truly accountable, I just ask that my objection be noted, and I would like a recorded vote on that.

**The Chair (Mrs. Linda Jeffrey):** Okay, committee, I don't see that there's any further debate. There are five rooms. Just for clarification, only one of them is televised. I think we'd all like it if they were all televised, but one out of five is what we have right now. The motion is on the floor, and a recorded vote has been requested.

**Ayes**

DiNovo, MacLeod, Savoline.

**Nays**

Brownell, Kular, Mauro, Mitchell, Sousa.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

The next motion we have on the floor is the report of the subcommittee as amended by Mrs. Savoline. All those in favour of the amended subcommittee report? That's carried.

1420

## PAYDAY LOANS ACT, 2008

### LOI DE 2008 CONCERNANT LES PRÊTS SUR SALAIRE

Consideration of Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts / Projet de loi 48, Loi visant à réglementer les prêts sur salaire et à apporter des modifications corrélatives à d'autres lois.

## STATEMENT BY THE MINISTER AND RESPONSES

**The Chair (Mrs. Linda Jeffrey):** The next item on our agenda is the Honourable Ted McMeekin, Minister of Government and Consumer Services. Welcome.

Committee, I'd remind you that the minister has 15 minutes to speak and then we're going to give each party five minutes to respond to the minister's comments on this legislation, beginning with the official opposition. Minister, you have 15 minutes.

**Hon. Ted McMeekin:** Thank you very much, Madam Chair. Let me assure you that it is very good to be here, given some of the other options.

I have with me today a number of people if the questions get too technical, if there are any questions. John Mitsopoulos is here—he's our director of policy—and Christina Christophe from our legal department is here. So I may ask them to join us if there is something beyond my scope in terms of questions.



I am very pleased to be here before the committee today. Before going any further, I just want to take a minute to express my personal thanks to a couple of people: Cheri DiNovo, to begin with, whose passion and concern for those who have occasion to use payday loans is well known—Cheri, thank you for your good work; my colleague Deb Matthews, who in the previous term of government did a resolution with respect to payday lending, which didn't go too far; and my parliamentary assistant, Charles Sousa, who in my recent absence has been so great in picking up this file.

The merits of our proposed Payday Loans Act, 2008, have been discussed twice in the Legislature, with broad support for its passage coming from all sides. I want to take just a few minutes now to underscore the crucial details that will make this progressive consumer protection legislation the success we all need and want it to be.

This proposed legislation will protect those Ontarians who from time to time rely on payday loans to help them through a short-term financial squeeze. The proposed act is an important part of the government's plan to protect our more vulnerable consumers as we begin to address the many sources of sustained poverty in Ontario.

We've all agreed on the need to create a stable, fair regulatory framework for the payday lending industry. This means a licensing regime that allows respectable payday lenders and loan brokers to operate responsibly while providing protections to consumers who rely on these services. How exactly are we going to accomplish the goals set forth in this proposed legislation?

Here's how: First, there's the licensing. The proposed act creates a licensing regime for payday lenders and loan brokers. Only those who conduct business in accordance with the law, and with integrity and honesty, will be permitted to operate within the province of Ontario. The proposed act allows for a separate fee to be charged in respect of a licensee's locations or branch offices. The consumer protection branch of the Ministry of Government and Consumer Services will administer the legislative framework, the licensing regime and the administrative penalty provisions of the act.

A registrar would be appointed to administer this proposed legislation. The registrar would have the authority to conduct inspections and to revoke or suspend licences. The overall licensing regime is intended, as with other Ontario licensing statutes, to be self-financing through licence fees.

There are also prohibited practices. The proposed Payday Loans Act, 2008, is designed to encourage payday lenders to make loans that are within the borrower's ability to repay. To that end, the proposed legislation prohibits certain practices, including those practices known as rollovers.

Proposed prohibited practices include back-to-back loans, more commonly known as rollover loans. The borrower pays off a first loan but immediately has to borrow again to meet financial needs until the next payday. In effect, the borrower is taking a second loan to

repay the first. The proposed legislation makes it an offence for a company to enter into a second payday loan agreement with a borrower until seven days after the full balance of the first payday loan is paid.

The same prohibition applies to concurrent loans. This is the practice of lending to a borrower who is indebted to the payday lender under an existing payday loan. Again, this proposed legislation would legally require companies to wait seven days after the borrower has paid the full balance under the first payday loan agreement.

Default charges, or charges imposed when a borrower is unable to repay the loan on the due date, will be controlled. Payday lenders would be limited to certain reasonable charges related to delinquent loans.

Discounting loan principals would also be prohibited. This practice sees payday lenders hiding fees instead of including them in the cost of borrowing. An example could be a customer who borrows \$300 but only receives \$280 from the lender because \$20 goes towards a "document" or "administration" fee. The proposed legislation will prevent this. It will be an offence for the payday lender to request or receive any payments of the cost of borrowing from the borrower prior to the expiry of the loan term. So if the loan is \$300, the borrower receives \$300, and this is how it should be in the world of payday loans.

Consumer protection and enforcement come next. As a general principle, the proposed Payday Loans Act, 2008, has been designed to encourage lender compliance. The act would make it difficult for the payday lender to profit when engaging in certain conduct, such as the prohibited practices. When a payday lender engages in most prohibited practices, the borrower does not have to pay the cost of borrowing associated with the related payday loan agreement. The borrower is only required to repay the advance under the agreement. In such situations, the borrower may demand a refund within a one-year period.

There is also a critical cooling-off period. The proposed Payday Loans Act, 2008, provides the borrower with two business days to cancel the payday loan agreement without penalty. The borrower doesn't need a reason to cancel the agreement. The cancellation operates to cancel the payday loan agreement as if it never existed. As a result, the borrower has to repay to the lender any advance received and the lender has to refund any payments the borrower made, including the cost of borrowing. The lender must also return all post-dated cheques and destroy all pre-authorized debits.

On the enforcement front, the proposed Payday Loans Act, 2008, provides a broad range of enforcement tools, depending on the nature and severity of the circumstances. Payday lenders and loan brokers who violate the law or fail to meet the proposed act's requirements could face certain sanctions like administrative monetary penalties, suspension or revocation of licences, or prosecution for contravention of the act.

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Then we have the important payday lending education fund. The fund will promote awareness and education,



which are keys to helping Ontario consumers better protect themselves. By order of the proposed Payday Loans Act, 2008, the minister will have the authority to establish the amount of payment that licensed payday lenders and loan brokers will make to the Ontario payday lending education fund. This fund will promote the education of consumers in regard to financial planning. It would also promote awareness of consumer rights and obligations under the proposed legislation.

The proposed legislation also empowers the minister to designate a not-for-profit corporation to administer the fund in accordance with the act and the regulations. That corporation would be obliged to give the minister information or reports on the administration of this fund. Payments to this fund will remain with the fund and will not be diverted to the consolidated revenue fund.

On the issue of the maximum total cost of borrowing, federal Bill C-26 provides the provinces with the opportunity to regulate the total cost of borrowing for payday loan agreements. As members of the committee probably know, several provinces have moved or are moving in that direction. Specifically, where the amount of money advanced under a payday loan agreement is \$1,500 or less and the length of the agreement is 62 days or less, the province receives designation under Bill C-26. Under the proposed legislation, “cost of borrowing” means the total of all amounts that a borrower is required to pay as a condition of entering into a payday loan agreement. It also means all amounts prescribed in the cost of borrowing, but not including default charges and the repayment of the advance. This means that if a consumer wishes to borrow \$300, any and all amounts that they are required to pay to the lender to receive the \$300 are considered the cost of borrowing. It doesn’t matter if the charges are called “interest,” “brokerage fees,” “administrative charges,” or anything else by any other name; they are all part of the cost of borrowing.

**Interjection:** Full stop.

**Hon. Ted McMeekin:** Full stop.

Ontario will establish an independent expert advisory board to recommend to the minister what an appropriate upper limit would be to the total cost of borrowing for payday loan agreements. The board would have three members selected by the Public Appointments Secretariat: one from the consumer and poverty advocacy sector, one from the financial sector and one from the academic community. The members will be acknowledged experts in their field and will provide a written report to me, as minister, recommending an upper limit to the total cost of borrowing, one that is fair for borrowers while ensuring the viability of a licensed payday lending industry in Ontario. Under the proposed legislation, the limit to the total cost of borrowing for payday loan agreements is to be set by Lieutenant Governor in Council regulation.

The advisory board will likely consult with industry, social, poverty, consumer and financial groups and with other experts as required. These consultations would contribute to a recommendation on the upper limit to the

total cost of borrowing for payday loan agreements in Ontario.

I very much appreciate, Madam Chair, the opportunity to be here today as you begin to assess the individual merits and details behind this proposed legislation. I’m sure your committee will do a good job, and in the fullness of time there probably will be some amendments that will be considered. We certainly hope that is the case. Thank you so much.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Minister.

For the opposition, Ms. MacLeod has five minutes.

**Ms. Lisa MacLeod:** Thank you very much, Minister McMeekin. It’s wonderful to see you back. Many of us here were thinking of you during your time away, so it’s great to see you back.

**Hon. Ted McMeekin:** Thank you.

**Ms. Lisa MacLeod:** I’m largely supportive of this bill, as is the official opposition. We just have a few questions that we’d like to see answered and some improvements to the legislation. At the outset, though, I would like to thank your staff for providing me with a briefing on the legislation just after it was tabled, and I see one of them is here.

**Hon. Ted McMeekin:** Was that helpful?

**Ms. Lisa MacLeod:** Yes, of course it is. They were a great help. So I just wanted to say that.

My fundamental concern here is that it is couched as a social policy bill or anti-poverty bill, when I personally feel, as well as my colleagues in the official opposition, that it should be more of a fiscal bill or an economic package. Quite honestly, I think it’s disingenuous to suggest that only low-income earners are using this when, I think even in your own dissertation, you suggested that folks are using this when they overspend.

I had an opportunity, through my research—and I know we have Mr. Marzolini up next, or I guess he’s up in a bit. I’ve not met him yet. I’m not even sure if he’s here. But going through his key findings for a report that he did for the Canadian Payday Loan Association: It suggested that the majority of payday lenders are employed full-time—over 68%. About one half, 51%, of the respondent payday loan customers have a post-secondary education; 36% are from a community college; 12% are from university; post-graduate professional programs, 3%; about one half, 45%, are married; and, on average, two thirds, 62%, of respondent payday loan customers normally borrow less than \$300.

With respect to that, Minister, I then would ask why this is couched as a poverty piece of legislation when I think it would be more relevant to not pigeonhole any demographic. I think we do a lot of disrespect to the Ontario public at large when we say that only a fragment, or a segment, of the Ontario public is using this service. I was also able to go through a lot of research through the Library of Parliament which also suggested that this created a niche in the marketplace because big banks, and in some cases credit unions, were not providing loans of this nature: short-term small loans. So I would welcome



your comment on why you believe that this should be part of the anti-poverty agenda. Philosophically, you and I probably disagree with the handling of the economy, but in terms of this legislation I'd be interested with respect to the Pollara findings, as well the Library of Parliament's recommendations.

**Hon. Ted McMeekin:** That's a good question, actually, and hopefully I'll have a good answer. Let me just say at the outset that we're very appreciative of the research that we received, the Pollara research, and some of the things that it indicated. I would agree with you that it would indeed be disingenuous to suggest that the only people who use this service are poor folk. We know that's not the case, but there is a significant number. I think even the Pollara research indicated that about 24% or 25% would fall clearly into the vulnerable category.

I guess, in the context of how it gets couched, governments try to find ways to present things that resonate with their overall scope and intent. Our government is committed to moving forward with a comprehensive poverty reduction strategy. This is but one component of that. There are many tentacles to responding to any poverty issue. In fact, I keep saying to anybody who has a real interest that poverty isn't just a provincial issue, a federal issue, a municipal issue, a church issue, a personal issue, a business issue or an educational issue; it's an issue that ought to concern us all. What's the old line? "No one's guilty, but we're all responsible." We have to have a comprehensive strategy. This being one part of that strategy responds in some small part to some of the concerns of vulnerable people. That's why that reference was made at least in passing, but we don't pretend that only poor, disadvantaged, vulnerable people are the only ones who use payday loans. I would agree with you that that would be quite disingenuous.

**Ms. Lisa MacLeod:** Thank you, Mr.—

**The Chair (Mrs. Linda Jeffrey):** You're out of time.

**Ms. Lisa MacLeod:** Oh, it's out of time. Wow.

**The Chair (Mrs. Linda Jeffrey):** Yes. I'm sorry. Ms. DiNovo.

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**Ms. Cheri DiNovo:** Thank you, honourable member. It's wonderful to see you here with us again, Ted—back.

**Hon. Ted McMeekin:** Thank you.

**Ms. Cheri DiNovo:** Welcome back.

**Hon. Ted McMeekin:** Good to be back. Thanks for your prayers.

**Ms. Cheri DiNovo:** Yes, absolutely. I continue to include you in them, and not in the part where I pray for my enemies.

**Hon. Ted McMeekin:** You and I will never be enemies.

**Ms. Cheri DiNovo:** You know very well where we stand in the New Democratic Party on this. I don't believe for a moment that it's only the poor who are being targeted by the—I would say "legalized loan sharks," but they're not legalized. They actually exist in that grey area with no regulation—by the desperate, because anybody who knows and is educated would

prefer not to pay 4% to 1,000% interest, according to not our own researchers but the researchers at the Toronto Star and elsewhere. They simply wouldn't. You can get money out from a credit card for far, far less than that.

I guess what I'm concerned about, of course, are the details. This is a first kick at the can. I recognize this bill as such. We, in the NDP, would support it, but we think it needs to go a great deal farther. The devil, or the angel, is in the details here. The devil or the angel is in a hard cap and the absolute interest rate charged by payday lenders.

When the federal government downloaded this responsibility they had a working definition of usury, so I'd be interested in what yours is. The federal government set theirs at 60%. So here we have an industry that is charging usurious rates by any definition of that under the Criminal Code or previously under the Criminal Code.

We would like to see—and we would demand to see, if we were to support it in its entirety after going to committee and having amendments made—a hard cap, such as they have in the States in a number of jurisdictions and, in Canada, in two at least, counting Quebec and Manitoba. The latest to come down the pike in terms of a hard cap is Ohio with 28%, and apparently payday lenders can still make money in Ohio at 28%. One would be pretty surprised if they couldn't. Anybody here who is of means would trade or should trade in their credit card if that's what they're paying on it, because you can get credit cards now that charge you a great deal less than that; not so with payday lenders.

I draw your attention to the way they market in my riding and in other ridings I've seen in the city. They market to Toronto Housing, they market to low-income communities. They set up payday lenders in low-income communities. They don't set up in Rosedale and Forest Hill. We have 24 and counting in Parkdale–High Park.

At the end of this entire process—I've already said that I hoped that this would be more transparent and televised because it's an important topic—I would hope that we come up with a hard cap that we in the New Democratic Party, and not only we in the New Democratic Party, but those anti-poverty activists across Ontario, could support. I duly note the incredible efforts of ACORN—the Association of Community Organizations for Reform Now—which I know is going to be deputing this morning. There has been a great deal of very good and very hard work done.

Some questions perhaps you could answer: What do you think is a usurious rate of interest, and are you amenable to a hard cap? I'll leave it at that.

**Hon. Ted McMeekin:** Those are all good points. You usually raise good points. We might not always agree, but I think your points are always well taken.

We're looking forward to setting a total-cost-of-borrowing limit. There may even be several total-cost-of-borrowing limits. The legislation provides that certain classes of individuals might be treated somewhat differently—for example, those on ODSP or welfare; those



cashing government cheques. That would be something we'd look forward to hearing.

As for the usury rate, I'm a bit of a Biblical scholar so I'd better not be quoting that rate or we'd all be in trouble. We look forward to the panel coming in and helping define that.

By the way, I hope that members around this committee and elsewhere who are reading Hansard or maybe watching a tape of this on somebody's website or whatever will choose to participate in the hearings on that.

One final point I'd like to make to you, Ms. DiNovo, is that my own personal preference and I think our government's preference would've been to see the federal government handle this itself and have an umbrella agreement right across the country that defined some of the important issues that you've identified and so that we didn't have to worry about a patchwork quilt of rates and rights and privileges and obligations. But they chose not to do that, so to the best of our ability we've been trying to work with the other provincial governments to create as close to sustainable, good umbrella legislation as possible. Time will tell whether we can achieve that or not.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Minister.

The government side has five minutes. Any questions or comments to the minister? Seeing none, thank you very much, Minister. We appreciate your being here today.

**Hon. Ted McMeekin:** Thank you, Madam Chair and members of the committee.

#### WHITELAW PUBLIC POLICY RESEARCH AND CONSULTING INC.

**The Chair (Mrs. Linda Jeffrey):** Committee, we have our first delegate on the phone: Mr. Bob Whitelaw. He's going to be joining us by teleconference.

Welcome, Mr. Whitelaw. We have your presentation in front of us. You have 15 minutes. If you don't use all your time, we will be giving time to the three parties to ask you questions about your deputation. You have the floor.

**Mr. Bob Whitelaw:** Thank you. Good afternoon, Chair and committee members. I'm pleased to be invited by the committee to provide information which I believe will prove helpful as Bill 48 is examined. I appear today, via teleconference, as I have both observed and had direct involvement with the payday business, not only in Ontario but throughout Canada, along with detailed research and fact-finding work internationally. During the past two years I have worked as a consultant dealing with credit unions seeking to provide their members with a small short-term loan product.

I plan to use the next few minutes to offer comments related to Bill 48 dealing with background and overview of the payday loan business; highlight recent international developments; answer the questions of why the use of payday loans is increasing and why banks and

credit unions do not offer a small short-term loan at this time; and then conclude with what I consider lurking issues within Bill 48.

On the matter of background and overview, during the past 10 years the cheque-cashing and payday loan stores have emerged as the only unregulated financial service business in Canada. The payday loan business has operated with questions about compliance with the 60% annual interest rate usury section of the Criminal Code requiring the interest to be based on a combination of interest and all fees. Moreover, Canada is the only country, based on my research, that attaches an interest rate control to a Criminal Code: section 347 of the Criminal Code, "Criminal interest rate." Uncertainty about the current payday business model and operations results from interest calculations that exceed the Criminal Code.

Today, 750 payday stores operate throughout Ontario and offer small short-term loans as an advance before an individual receives a paycheque, pension cheque, employment insurance payment or social assistance payment based on direct deposit. The payday industry is growing, and one major company recently announced a strategic change to open a store in every community with a population of 7,500 rather than the current base of 40,000 or more. Large US firms that I've been tracking are moving into Canada; one US firm has opened 10 stores during the past few months and plans another 15 within the next few weeks.

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So what we have here is that the key to a payday business model is that the consumer, whether a newcomer, immigrant, marginalized—Canadians as a whole—must have a chequing account with a credit union or bank, and confirm direct deposit of their regular source of income. Credit unions and banks now recognize that two million Canadians use payday loans, and the annual loan volume is \$2 billion. Also, the opening of payday stores is now happening within sight of banks and credit unions, and that very much has been part of the current product-planning discussions that I've been involved in with these financial institutions. As they look out their front door or down the street, there is now the appearance of a payday store. Again, these payday stores are serving all sections of society throughout Ontario, and as I mentioned, the newcomers, the immigrants, the marginalized are included in the users of payday loans along with the Canadians who are finding it more difficult to live week to week on their paycheque or month to month on their pension cheque.

The next point in the paper that I think is important is understanding the question of why Canadians use payday loans. I was a public servant for 25 years. I have a lot of contacts, and consistently that question is asked. I believe it's important to understand why bank and credit union customers are going to payday stores as you examine Bill 48. Provincial and federal civil servants, and indeed elected representatives, both federal and provincial—and senators—have all taken me aside and asked the same question: Why do Canadians use payday loans rather



than traditional credit products such as lines of credit, overdraft protection and access to cash advances on credit cards?

Simply put, there is no financial institution today that will provide small, convenient short-term loans, that type of product that responds to the increasing consumer acceptance and use of payday loans, except for the payday business.

The fact-finding that I've undertaken during the last two years, the research with credit unions in Ontario, Manitoba and Saskatchewan, indicates—and I think this is of interest to you and the committee—that between 10% and 15% of credit unions members are using payday loans in the absence of access to small short-term loans at their credit union. I expect that the results will be similar at banks, based upon comments that I have been given and obtained.

Trying to stay right on focus in your review of Bill 48 and the clause-by-clause, the question is, what are, in my opinion, the four principal reasons?

Ongoing research by firms such as Environics clearly indicates that an increasing number of Canadians are living paycheque to paycheque. Since preparing this report on the weekend for your review today, Environics has confirmed that more than a third of Canadians are living paycheque to paycheque or indicate that they are in some financial jeopardy if their pay is held back two or three days—33%.

Today, computer-based systems are used by credit unions and banks to determine creditworthiness and risk factors. These include assets, liabilities and related information combined with the use of credit reporting scores such as a Beacon score or what is called a BNI, a Bankruptcy Navigator Index. A Bankruptcy Navigator Index is a prediction of your possibility of going into bankruptcy within the next two years as a percentage. A low Beacon score and a high Bankruptcy Navigator Index result in denial of credit products. In the past, loans officers and branch managers would grant credit on personal knowledge of a client. But again, if we look at society and how it's changed, with our newcomers, with the immigrants, with the marginalized, it's more and more difficult to have the personal relationship, and that computer-based credit-granting system looks at those assets, liabilities and a credit score.

Prior to the current and more stringent risk tolerance tests along with required documentation to assess credit, bank and credit union staff used a practice known as unauthorized overdrafts. This happened in the last decade but has been replaced by payday stores. This process involved a telephone call from a customer requesting coverage of a couple of cheques for a few days until the next payday or the arrival of the monthly pension cheque. These requests were often granted because the client was known. Today the unauthorized overdrafts and the ability to write a cheque knowing that clearing will take two to three days has ended—with no exceptions.

The fourth factor, and just as important, in supporting why we have payday stores today, why we have need for

short-term money for a few days, is that Canadian personal savings rates as a percentage of disposable income are negative. I've tracked each and every province, including Ontario, and watched the downward trend for the last two decades. Savings rates have declined annually since 1981, while the debt-to-income ratio has increased to a level we now call debt overhang. Without rainy-day savings for unexpected expenses, combined with the absence of small, short-term loans from banks and credit unions, the only viable option is to turn to a payday lender, which has resulted in your review today of Bill 48.

I also think it's important, from a provincial point of view and for your committee work, to be knowledgeable of the international payday loan trends and decisions. An important part of my research has been involved in fact-finding with jurisdictions outside of Canada. Time today does not allow a full discussion, apart from the following point: The US federal government and a number of states are moving toward a 36% annual rate or less, with Ohio taking a new lead last week and setting, as a state, a 28% annual percentage rate as the maximum.

By the way, the federal US government has imposed a 36% annual rate for all military personnel and their families at bases and payday stores. So that is consistent as a national policy throughout the United States. US credit unions now offer their members payday-type loans of a few hundred dollars at annual rates of 12% to 18%, while reporting profitability and minimal losses.

New South Wales uses 48% APR, and earlier this month I returned from the United Kingdom, where the government is examining a series of regulated rates where the current payday loans are based upon £25 per £100 of borrowed money, and also reviewing what is called "doorstep lending," where your loan of £50 or £500 is delivered in person to your front door.

In summary, it is important, because of your invitation that I appear before the committee, to deal with Bill 48 and what I perceive as the emerging and lurking issues. Twenty-five years of my career were spent in government, dealing with public policy risk-management regulatory issues. In reviewing Bill 48, the current approach by Ontario to Bill 48 and the independent legislation and regulation by individual provinces will result in considerable fragmentation and lack of harmonization.

For example, Quebec already permits payday operations, provided a licence is obtained and interest rates do not exceed 35% on an annual basis. Newfoundland and Labrador plan to use section 347 of the Criminal Code, with a maximum annual interest rate of 60%. Alberta is still involved with consultations on a future decision about whether to accept the status quo, introduce a fee structure, or introduce legislation. The Manitoba Public Utilities Board recently determined a graduated rate series that followed extensive consultations and research. The Manitoba decision is now being challenged by the payday industry.

Point 2, also very important, is that Bill 48 is silent on how to acknowledge and respond, through legislation and



compliance, to the growth in Internet payday firms. My research, and I've shared this with the Senate, shows that there are 1,200 or more existing online payday firms. A Web-based application form is all that's required. Considerable personal and bank account information is filled out online and then the payday loan is transferred into your account, and a few days later the funds are withdrawn to repay the loan. These payday Internet firms do not exist only in Canada, but throughout the United States and internationally. There are issues on personal identification, privacy etc. When I mention these Internet groups to the credit unions and banks, they are less than thrilled to know that their customers and clients are providing a tremendous amount of personal information online.

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Point 3: The educational proposal within the Ontario legislation needs to recognize the root cause. This involves credit scores and lack of personal savings plans for unforeseen expenses, particularly when access to traditional credit products is denied. Key to financial literacy today is a full understanding of the importance of some form of savings and personal credit score. This also brings in the education to our newcomers, to our immigrants, to marginalized people who are turning to payday stores because they don't have that financial literacy component of knowing the importance of savings and knowing the importance of achieving and maintaining a solid credit score.

One of the things that I've looked at with credit unions and that has been reported publicly is some opportunity of building an incentive savings plan to break the payday-to-payday cycle and to improve programs to deal with credit scores. My estimate is that the final costs to the provinces to deal with the requirements of the federal downloading of Bill 26 will total \$12 million to \$15 million throughout Canada, and that's a very low estimate, a beginning estimate, for licensing, oversight, regulations and compliance to deal with the 1,400 payday store locations, while missing the regulatory and licensing control factors of the Internet payday industry.

The committee members, in reflection, may find merit in examining an alternative approach that I believe is still viable, and that is by using the model of the income tax rebate amendments to section 347 of the Criminal Code in 1983. The Tax Rebate Discounting Act sets a national graduated fee structure and is administered nationally, in this case by the Canada Revenue Agency. This could provide an important option for the current policy discussions by returning the authority for fees and regulations to the federal government while assigning licence responsibility and related consumer affairs matters to the provinces.

Madam Chair and committee members, I sincerely appreciate the time to make this presentation to you today. I welcome your questions.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Mr. Whitelaw. That was a very detailed and thoughtful presentation. Unfortunately, you used all of your time. I

understand that if committee members have questions, they can go through the clerk's department to ask those questions of you. We appreciate you being with us this afternoon. Thank you.

**Mr. Robert Whitelaw:** Thank you.

## POLLARA

**The Chair (Mrs. Linda Jeffrey):** Committee, our next deputant is Pollara, Mr. Marzolini.

Welcome. As you get yourself comfortable, if, just before you speak, you would state your name and the organization you speak for for Hansard. Then, once you begin, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask questions.

**Mr. Michael Marzolini:** Thank you very much, Madam Chair and committee members, for the invitation today. My name is Michael Marzolini. I'm chairman of Pollara, a strategic public opinion and market research company. We've been in business for 23 years. Our largest office is in this province; also offices right across Canada, and some in the United States. I myself have been in this profession for 36 years. I'm actually a lot older than I look, although some days I would argue that.

What I am here today to do is to lay out some hard data on the subject of the attitudes, perceptions and demographics of payday loan users. We have undertaken a study on behalf of the CPLA to come up with scientific, clinical and objective measurements of the reasons why people use payday loans, who the users are who actually take advantage of the service and what their attitudes are overall toward them. I will present that to you, hopefully in only about five minutes. That will leave you a lot of time for questions.

We're not here to spin the results in any way. Public opinion is civilization's most powerful currency. It is the one thing that cannot be taxed, taken away from you or confiscated. What we want to do is lay out what the people told us and how we took that data. I'll be very pleased to go through the results during questions.

Much more briefly, I'm going to go through the executive summary, assuming I can learn how to use PowerPoint on this computer very quickly. You have the report in front of you. What we did was to interview 503 payday loan customers back in August. That gives us results accurate to plus or minus 4.4%, 19 times out of 20. In order to find those people, we went to the CPLA members and selected from their databases 13,233 records, not chosen by any—this is certainly not the graph. We have a hardware malfunction here. Perhaps I should just leave it with the report that is in front of people.

So the 13,233 records were not chosen by the types of loan, the size of loan or any of those types of demographics. They were simply selected randomly from the people who have taken on a contract with a payday loan association.

What we find—and again, I'm not here to spin the results—what is very clear from the evidence is that the payday loan customer in Ontario is generally not the



downtrodden who has fallen through the cracks in society. Looking at page 2, the profile of the respondent payday loan customer in Ontario, the average age is 39 years. A majority—that's almost seven in 10—are employed full-time. Over half have a post-secondary education from a community college, which is about a third; a university, which is 12%; or a post-grad professional program, which is 3% of the entire population. One half are married; 18% are separated or divorced; and 33% have never been married, which would tie in with the younger age demographic.

On average, two thirds of the respondent payday loan customers—that is, 62%—normally borrow less than \$300 when they get a payday loan. The respondent payday loan customers expect to pay, on average, about \$23 for interest and administration fees to borrow \$100 for two weeks. That is not what they wish to be paying; that's what they expect to be paying. We did see in some of the findings in the survey a great deal of understanding of the terms of the loans. In fact, they share the interest rates that they are aware of about as highly as they do with credit cards and their own home mortgages. Speaking of home mortgages, the average amount of money that respondent payday loan customers in Ontario currently owe the financial institutions, excluding mortgages, is \$23,579.

Household incomes, and I'm sure there'll be some questions on that: The respondent payday loan customers have household incomes equal to the general Ontario population. That is in StatsCan: 43% of Ontarians report household incomes of less than \$50,000 a year, and that's all Ontarians. That compares to 42% of the respondent payday loan customers.

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There is a great deal of knowledge, on the part of payday loan customers of the financial instruments they have had or that they have: 96% of these people have a debit card, 93% have a chequing account at a bank or a credit union, three in five have a savings account, and 52%—a little bit more than half—have a major credit card. One in five—19% of the entire respondent payday market—currently has a home mortgage.

Respondent payday loan customers provide payday loan companies with a very similar average impression rating as credit card companies. They don't see too much difference in terms of the impression they have of credit card companies and payday loan companies, although payday loan companies are slightly higher. Banks are higher, although in the last 25 years I've worked for three banks on their impression ratings, and we know that the bank image, which is 6.8 on a scale of one to 10, is very high because people have to trust banks; that's where they keep their money.

There's no significant awareness of difference in the approximate amount of money that respondent payday loan customers pay for all fees for their loans with various financial institutions. If we take people who are aware of the amount they pay for all fees, including administration fees and interest charges for their payday loans, that's 61%, compared to their various bank ac-

counts, which is 65%; credit cards, 72%; and their home mortgage, 72%. Home mortgages, of course, would be a little bit higher, because that's a lot larger amount of money, whereas the average payday loan is \$300.

I think I may have hit the five-minute mark, or maybe even six or seven, so I'm going to open this up to questions. I think the point the survey makes, and the report that is in front of you, is that payday loan customers are average Ontarians. They are familiar with financial instruments such as payday loans, they are well educated and they have a 1% higher household income than people who are not payday loan customers. That is counter-intuitive, but it's certainly what we found from the survey.

I welcome all questions on the methodology and on the more detailed findings. Again, my apologies for the breakdown of machinery.

**The Chair (Mrs. Linda Jeffrey):** You did very well, and you didn't get flustered.

That was very interesting. Each party has two minutes to ask you questions, beginning with Ms. MacLeod.

**Ms. Lisa MacLeod:** Thank you very much, Mr. Marzolini. I appreciated the data you provided to us. I think it actually speaks to where I see this legislation lacking, which, as I mentioned to Minister McMeekin, is that it's looked at as a social policy bill rather than a fiscal policy bill. I think that when you look at the discussion note by Bob Whitelaw, he also mentions something I talked about during second reading, which is fiscal literacy.

You're talking to me and to my colleagues today about it being the average Ontarian who is using this service with the reputable payday lending firms. I think we have another issue that this bill does address, which is Internet. We're not addressing Internet payday loans, but this is an issue, as well as some of those loan sharks who are out there.

We've become a credit card society. People, whether of low-income needs or significant needs, are actually using this for their emergency funding, their vacation funding or their "hold me over so I can buy that good or service" funding. I think that when we pigeonhole one group and don't look at the systemic issues we're confronting here in Ontario, which is the credit card economy, we're doing a disservice.

I guess I would ask you: Would that be relevant? What would your suggestions be, in terms of this legislation, in how to educate these folks so they're actually spending their money better and we're not in a circle of debt as Ontarians? Certainly that's what I've taken from your findings and from some of the in-depth research I've seen.

**Mr. Michael Marzolini:** I think you're asking me to go beyond my jurisdiction in this. I'm presenting the data, and I don't really wish to get into whether this should be social or financial.

What we do know, however, is that when we have done focus groups of payday loan users, they tend to get very annoyed—again, this data is very anecdotal, because we're talking about focus groups, which do not have a statistically valid margin of error—and they do tend to



react very negatively to the stereotypes given to them that they are people who don't know what they're getting into and don't understand the situation.

In the case of our Manitoba focus groups, which you can find in the transcript on the CPLA website, I remember one gentleman who was louder than everybody else in terms of that. He said, "I've used venture capitalists and I've had every different type of bank loan and small business loan, and I don't like being pigeonholed in a society of which I'm not really a member." So there is that aspect to it, in terms of how the people themselves see the issue.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** The first question I have is: Who commissioned and paid for this study?

**Mr. Marzolini:** It was commissioned by the CPLA.

**Ms. Cheri DiNovo:** And the CPLA is?

**Mr. Marzolini:** The Canadian Payday Loan Association.

**Ms. Cheri DiNovo:** Thank you very much. That tells us a great deal about the contents of the study too.

The second question I have is about your sample size. How many people were sampled?

**Mr. Marzolini:** We interviewed 503 from the 13,337 that we sampled.

**Ms. Cheri DiNovo:** So only 503 across Canada?

**Mr. Marzolini:** No, across Ontario. We spoke to a couple of thousand across Canada—

**Ms. Cheri DiNovo:** Only a couple of thousand.

**Mr. Marzolini:**—but in Ontario, 503, which is accurate to plus or minus 4.4%, 19 times out of 20.

**Ms. Cheri DiNovo:** How did you gain answers to the survey? How was this actually administered and by whom?

**Mr. Marzolini:** It was done by telephone. We believe that telephone coverage is better than the Internet for the purpose here, because 99.2% of people in the province have access to a telephone. The questions that were asked are all in the report. We tended to word these questions very objectively, scientifically and clinically. We were not looking to lead the respondents in any direction. We're not here, as I mentioned, to spin for our client or make public opinion look different than it actually is.

**Ms. Cheri DiNovo:** My final question—I'm just choosing one at random here: You asked for the reasons for choosing payday loans and discovered that 51% said it was a quick and easy process, versus 15% who said they had no alternative. Our experience through the United Way, and certainly our experience on the ground, is that there's a lot of shame that goes into credit and a lot of shame that goes into using payday lenders. Do you think that people might say "quick and easy" when they actually mean "no other alternative"? That's just one example of a very flawed study, I have to say.

**Mr. Marzolini:** In addressing that, I would tie that question, on page 10, to the answers we received on page 14; that is, when it comes to a quick and easy process, the ease in the way people were treated at the payday loan centre actually tests better than the treatment at banks and credit unions.

The quick-and-easy process is not why they used payday loans. That's in the following question, which is on page 11: "Which of the following was the main reason why you needed the payday loan?" "For 'emergency' cash to pay for necessities" comes up in one third of all responses. Helping out with unexpected expenses, like a car or household repairs, was 26%.

**The Chair (Mrs. Linda Jeffrey):** For the government side, Mr. Sousa.

**Mr. Charles Sousa:** Thank you very much, Mr. Marzolini. I appreciate your information. This is a random sample, as you explained. Out of the sample, was there one who was using one company more than another?

**Mr. Marzolini:** They were chosen by the market size among Canadian Payday Loan Association members. You might assume that the results of the survey would be the same among those who are not payday loan members—we don't know that, because we haven't interviewed those people; we just talked to the payday loan members and chose proportionally. For example, if Money Mart has 35% of the customers in Ontario, that would have wound up being 35% of our sample. We also looked at the sample regionally to make sure that every region in the province was covered. We didn't quota by any income or gender; we just looked at the actual marketplace—the market size.

1520

**Mr. Charles Sousa:** There's a default rate of around 22% here. Have you any sense of how it's being accommodated or the reasons as to how they got into that situation, and is 22% reflective of that high income or is it worse, or even more so with lower income?

**Mr. Marzolini:** I believe the default rate is actually smaller than 22%; that is, people who have not paid back all the time on time. I believe the people who have not paid back at all are a lot fewer than that. But we did not ask any questions around the reasons for that.

Here we are: Seventy-eight per cent paid back all the loans on time; a further 17% paid back most of the loans on time. Paid back some of the loans on time: 4%; paid back none of the loans on time: 1%. That doesn't necessarily add up to that number in terms of the loans, but those are the customers and in their experience in one instance perhaps in the past. For multiple, we don't have that.

**The Chair (Mrs. Linda Jeffrey):** Thank you.

**Mr. Charles Sousa:** I'd like to share—

**The Chair (Mrs. Linda Jeffrey):** No; I'm sorry. Your time is exceeded. Thank you very much for being here today. We appreciate it.

CASH 4 YOU CORP.

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Cash 4 You Corp., Mr. Mahmoudzadeh. Would he be here?

Welcome. As you get yourself comfortable—I'm sure you know the drill now. If you could say your name, the company you represent and then you'll have 15 minutes.



If you use all your time, we won't be able to ask you questions. If you leave some time, there'll be an opportunity for us to question you on your presentation. Do you have a handout?

**Mr. Amir Mahmoudzadeh:** No, I don't.

Good afternoon, Madam Chair, members of the committee. I appreciate the opportunity to speak to the committee about Bill 48, the Payday Loans Act, 2008. My name is Amir Mahmoudzadeh. I'm the executive vice-president of Cash 4 You Corp. I'm also a member of the board of directors of the Canadian Payday Loan Association. Our company is, of course, a member of the CPLA.

Cash 4 You is a retail financial services company which offers not just payday loans but cheque-cashing, money transfers and other ancillary services. The company was started in 2001, and we currently operate 20 retail stores in 12 cities across southern Ontario. We employ close to 100 full- and part-time staff.

The backbone of our company is our customer service representatives, who are involved in every stage of interaction with our customers. Our branch managers are responsible for the overall operations of their stores, for maximizing consumer protection and meeting customer expectations.

Our company understands the importance of increased consumer protection, particularly in the areas of consumer education, fair collection practices, and credit counselling information for consumers. We have been a member of the CPLA since 2004 and have adopted, with 100% compliance, the code of best business practices. We display the code prominently and proudly in all of our stores.

Let me talk a bit about the code. I think it's important to stress its significance for two reasons: first, because it was a voluntary measure taken by members of the CPLA; and second, because, in the absence of government regulation, its application is limited to members of the CPLA. As a condition of membership, CPLA members must follow the code, which, among other things, places a limit on default charges and has clear rules around disclosure of fees and charges, fair collection practices and customer privacy. The code gives our customers the right to rescind at no cost and prohibits taking collateral as security against repayment of a loan. The code also requires us to place credit-counselling brochures in a prominent location in all of our stores. Most importantly, the code prohibits rollovers, a practice that was banned by the CPLA four years ago. The measures contained in the code were taken by a membership that believes in consumer protection and in a viable industry providing a needed service.

Cash 4 You has voluntarily submitted to the application of the code and to the compliance activities carried out by the office of the independent ethics and integrity commissioner.

I note that many of the previous provisions contained in CPLA's code are reflected in Bill 48, as well as in earlier regulations brought forward by government to

help provide information about payday loans to consumers in a way that makes sense and can be compared amongst different providers. I'm pleased to see that Bill 48 contains a prohibition against rollovers, as well as a cancellation provision and a restriction on default charges.

Speaking as a medium-sized operator and as a member of the CPLA, I'm very happy to see these kinds of rules that have been voluntarily followed by Cash 4 You and other CPLA members finally enshrined in legislation. The passage of this legislation will create a level playing field for all operators and will deliver consistent consumer protection across industry to all of its customers.

Let me talk a bit about the customer. You've just heard a presentation by Pollara about a groundbreaking survey of payday loan consumers. Having been in operation for the last seven years, I can tell you first-hand that the results of that survey reflect what we see every day with our own customers. Our customers make a conscious decision in choosing a payday loan. There's a demand for this product, and that demand is being met by the industry. Our customers typically require a payday loan because they have experienced an emergency or have run into some unexpected expenses and need to pay for necessities. They like the ease of a payday loan. It's a quick and easy process and the locations are convenient. They're satisfied customers who understand the terms of the loans and the total costs that they're paying. We also know that the vast majority of payday loan customers repay their loans on time.

My company is proud to be serving its customers—educated, middle-of-the-road Ontarians who know exactly what they're doing. We provide our customers with the convenient financial product they need, where and when they need it. We have been advocating for the regulation of the industry for some time and are pleased to see legislative action in Ontario.

Thank you for your time. I'm pleased to answer any questions.

**The Chair (Mrs. Linda Jeffrey):** Thank you. You've left just over three minutes for each party to ask questions, beginning with Ms. DiNovo.

**Ms. Cheri DiNovo:** Yes. Thank you for deputing. There's a comment that you make in your deputation—this is the printed version—that contradicts completely what the Pollara study says. You say that your payday loan customers rarely obtain payday loans and only do so in genuine emergencies, when other credit options are unavailable. Could you explain that inconsistency?

**Mr. Amir Mahmoudzadeh:** I would have to review the Pollara findings a little bit more in detail. I don't have the study right in front of me to speak to it.

**Ms. Cheri DiNovo:** Oh no, I think you're right; I think they're wrong.

**Mr. Amir Mahmoudzadeh:** However, I would say that it's a mixture of both. A lot of times, consumers use their products because they are paying for necessities and sometimes they may require it for other personal reasons, which they may not choose to engage in conversation with.



**Ms. Cheri DiNovo:** The other thing is—I just brought this as a sample; I didn't realize it was yours until I got here. This was dropped off. It's giving people \$260, so it says; it's in the form of a cheque, with no strings attached, no credit asked. It's from your organization, Cash Store, and it was delivered to Toronto Housing, to a place where the average income is ODSP/OW earners only. It was targeted there. So if your customer's a middle income earner, that typical customer, why are you targeting people who are on social assistance?

**Mr. Amir Mahmoudzadeh:** Ms. DiNovo, I can't comment to that because my company is Cash 4 You. I think you've mistaken my company with—

**Ms. Cheri DiNovo:** Oh, the Cash Store—sorry. Okay, I'll save that. Do you do something like this? You do. Come on; face it.

**Mr. Amir Mahmoudzadeh:** No, no.

**Ms. Cheri DiNovo:** You don't? You don't market at all?

**Mr. Amir Mahmoudzadeh:** Of course we market, but we certainly don't send cheques that are—or I can't make any reference to that because I haven't seen that publication or advertisement.

**Ms. Cheri DiNovo:** Okay. The last question is: What do you think is a usurious interest rate? You know that in the Criminal Code it was 60% at one time. What would you say is a usurious interest rate?

**Mr. Amir Mahmoudzadeh:** I don't think this would be the grounds for me to comment on that. However, I would say that a rate that is going to make it consistent for operators to be able to provide the service and at the same time provide consumer protection, is something to be later determined.

**Ms. Cheri DiNovo:** Okay, but it's definitely over 60% that you charge your customers? Correct?

**Mr. Amir Mahmoudzadeh:** It would be unfair to peg payday loans as an annual percentage rate. I like to give the example that if you need some Tylenol you can walk into a convenience store and pay \$5 for five tablets of Tylenol, whereas you can go to Shopper's Drug Mart and buy 50 of them for \$3. So to peg our industry with an annual percentage rate doesn't necessarily apply, for the same reason that Blockbuster doesn't advertise \$5 a day times 365. They don't provide an annual rate for their movies.

**Ms. Cheri DiNovo:** So you think a 300% to 1,000% interest rate is justified?

**The Chair (Mrs. Linda Jeffrey):** Thank you; your time has expired. Sorry; I didn't have time for another question.

The government side: Mr. Mauro. You have three minutes.

**Mr. Bill Mauro:** Thank you, Mr. Mahmoudzadeh. This is nice to hear: that you favour the introduction of the legislation. Are all operators members of the CPLA?

**Mr. Amir Mahmoudzadeh:** No, they're not.

**Mr. Bill Mauro:** Some aren't. Okay. The ones that aren't: Do they adhere to the code, or you wouldn't know? I suppose you have no way of knowing.

**Mr. Amir Mahmoudzadeh:** Yes; we do not monitor them.

**Mr. Bill Mauro:** Right, okay. You mentioned that your operation prohibits rollovers.

**Mr. Amir Mahmoudzadeh:** That's right.

**Mr. Bill Mauro:** Does everybody define a rollover the same way as that—as a second loan to pay off the first loan? Is that it in a nutshell? That's a rollover?

**Mr. Amir Mahmoudzadeh:** Essentially, yes.

**Mr. Bill Mauro:** Okay. From your perspective as an operator, you're telling us that you prohibit them within your business group. Do you feel that that just pushes the business onto another operator? Or how does it affect you and how do you come to support that? I'm curious.

**Mr. Amir Mahmoudzadeh:** That I can't comment on, whether or not we're sending business into the hands of our competitors. However, I can say from my company's standpoint that we want to protect our consumers and to make sure that we're retaining our customers, from a profitable standpoint. If we're overextending the consumers, they obviously can't repay us and we end up losing money.

This is a risk-management aspect that our company, as well as members of CPLA, have decided to undertake, just like a credit card company where they base credit limits—they're not going to extend \$15,000 credit to a particular customer. With us, we're not going to extend double loans or rollovers to our customers as well, because it's not in the best interests of the consumer.

1530

**The Chair (Mrs. Linda Jeffrey):** Ms. Mitchell.

**Mrs. Carol Mitchell:** I want to give you the opportunity to speak about what you do to provide education to the consumers who are using your services.

**Mr. Amir Mahmoudzadeh:** In each of our branches we have two different types of pamphlets.

The first pamphlet would be to discuss credit counselling options. Within that pamphlet, there are telephone numbers that our consumers can call if they are facing difficulties in terms of repaying the loan. We work quite often with credit counselling agencies—not-for-profit organizations—in developing repayment schedules for some customers who unfortunately from time to time experience temporary cash-flow situations.

The second pamphlet we have in our stores is just a simple guide on how to use the payday loan. It gives an introduction on what the product is and when it should be used, and indicates to our consumers that it is there for their use. If they require any additional information, then we would be providing that through our customer service representatives and our store managers.

**Mrs. Carol Mitchell:** Was the rollover ban something that was recommended by your association? Is that part of the code of conduct?

**Mr. Amir Mahmoudzadeh:** Yes, it was.

**The Chair (Mrs. Linda Jeffrey):** Ms. Savoline.

**Mrs. Joyce Savoline:** Two very quick questions: First of all, what interest rate does your company charge?



**Mr. Amir Mahmoudzadeh:** Our company charges 59%, and we also have a cheque-cashing fee that's applied to the loan.

**Mrs. Joyce Savoline:** How much is that?

**Mr. Amir Mahmoudzadeh:** It's approximately \$20 per \$100, if you equate interest plus service fees.

**Mrs. Joyce Savoline:** So, \$20 on top of—did you say 59% or 69%?

**Mr. Amir Mahmoudzadeh:** Fifty-nine.

**Mrs. Joyce Savoline:** Fifty-nine per cent.

On your website, you have a bit of information, but there's absolutely no information about the payment and contract details that you expect someone to sign. Why is that?

**Mr. Amir Mahmoudzadeh:** I guess, from one standpoint, it's not a very complicated contract. It's a simple, one-page disclosure statement.

A customer can walk into any of our branches and receive a copy of a blank loan agreement. As well, each of our customers is provided with a loan agreement upon completion of every payday loan transaction. The customer not only takes that with them, but they also have the option to rescind that transaction at no cost on the following business day. If they go home and decide that a payday loan is not right for them—they review, again, a simple contract; it's more a promissory note than anything—they do have the option of returning on the following business day and cancelling that loan.

**Mrs. Joyce Savoline:** Given that it's not complicated, wouldn't it behoove you to put it on the website so that people would know that and could read the fine print before they ever get to you?

**Mr. Amir Mahmoudzadeh:** We'll definitely take that into consideration.

**Mrs. Joyce Savoline:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today. We appreciate your time.

#### ACORN CANADA

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is ACORN Canada.

Welcome. Take a seat and make yourself comfortable. As you make yourself comfortable, could you state your name and the organization you speak for? Once you begin speaking, you will have 15 minutes. If you leave time within that 15 minutes, there will be an opportunity for us to ask questions about your presentation. Your presentation is being handed out right now.

**Mr. Edward Lantz:** I'd like to thank everybody here for allowing ACORN. My name is Edward Lantz. I'm the chair of the St. Jamestown chapter of ACORN, in the city centre at Wellesley and Parliament. The neighbourhood I live in is comprised of roughly 10,000 low- and moderate-income people, just to give you the gist of where I'm coming from.

Ontario ACORN is an organization of nearly 15,000 low- and moderate-income families across the province. We started our campaign to regulate the payday lending

industry nearly four years ago. We're pleased today that the government has come forward with this legislation to regulate the payday lending industry.

ACORN members are encouraged that there will be a licensing regime introduced, that there will be inspections and that there will be a ban on the hidden fees that have caused so many problems for low- and moderate-income people across Ontario. ACORN members are concerned that there isn't a cap on the interest rate. The true value of this legislation rests on whether the interest rate lowers the cost of payday loans or maintains the status quo.

In Manitoba, the interest rate set by their payday lending legislation is controlled by an arm's-length utility board, so that it is insulated from political changes and so that the rate is closer to representing an objective analysis of the needs of low-income communities and payday lenders.

This legislation sets aside money for a payday education fund. ACORN's position is that that money should be controlled by consumer organizations, community organizations and credit unions, as opposed to going back to the payday lending industry. The fund should support financial literacy and financial literacy outreach.

Lastly, the existence of payday lenders is a symptom of a much larger problem. In low-income neighbourhoods across the province, mainstream financial institutions are moving out and the void is being filled by fringe financial institutions. In this specific case, payday lenders are stepping in to fill a need for small amounts of money to be loaned out. They are nothing more than loan sharks preying on people whose banking needs are not being met by the financial mainstream.

We need the government to take this legislation a step further and set up a standing committee to work with credit unions and banks to help the low- and moderate-income communities of Toronto and across Ontario get their banking needs met. This regulation is only one step in the right direction. The larger issue here is the need to address the banking needs of low- and moderate-income families across the province.

Thank you very much for your time.

**Mr. James Wardlaw:** I'd like to add a little bit, if I—

**The Chair (Mrs. Linda Jeffrey):** Could you identify yourself for Hansard, please?

**Mr. James Wardlaw:** My name is James Wardlaw. I work for Toronto ACORN.

I just wanted to say that the way ACORN has built this campaign over the last four years has been to work door-to-door in low-income neighbourhoods. In the last four years, we've done more than 10,000 one-on-one visits on people's couches. We've talked to them about this and other issues. That's how we've come up with this demand.

We've chosen not to do our outreach over the phone, because a lot of people who are buried in payday lending debt get their phones cut off. I just wanted to make that distinction between the work we've done and information



we've gathered, and the information that's been gathered by other organizations.

If there are questions, Eddie or I could take those now.

**The Chair (Mrs. Linda Jeffrey):** We have about three minutes for each party, beginning with Mr. Mauro.

**Mr. Bill Mauro:** Mr. Lantz and Mr. Wardlaw, congratulations on your work over the past four years. I would expect you must be feeling pretty good, given what is occurring here today.

Mr. Wardlaw, you mentioned that you were doing a lot of one-on-one consultation. Can you tell me about the experience people you've talked with have had with rollovers in this particular industry?

**Mr. James Wardlaw:** I don't have numbers for you, but I personally have spoken to hundreds of people who have used payday loans, because they had to—they had no other option—many of whom have ended up in rollover situations where they've paid hundreds or thousands of dollars on an initial loan of \$100 or \$200 or \$300.

**Mr. Bill Mauro:** So they found that some institutions are using rollovers and some are not?

**Mr. James Wardlaw:** Yes.

**Mr. Bill Mauro:** A last quick question: When you began your lobbying effort four years or so ago, was it focused at the federal government level first?

**Mr. James Wardlaw:** Yes.

**Mr. Bill Mauro:** Can you talk a little bit about that?

**Mr. James Wardlaw:** About lobbying the federal government?

**Mr. Bill Mauro:** Yes. What was the response from the federal government in terms of your efforts to see this regulated nationally and not just provincially?

**Mr. James Wardlaw:** They passed the responsibility to the provinces in the fall of 2006.

**Mr. Bill Mauro:** Was there a reason given?

**Mr. James Wardlaw:** I think you probably all know better than me about that, but as far as I know, they said this issue was more about consumer protection than about the Criminal Code and interest rates.

**Mr. Bill Mauro:** Okay. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mr. Sousa.

**Mr. Charles Sousa:** Thank you for your presentation.

There's a point you made in regard to the education fund and how it's going back to the payday loan industry. I just want to clarify that that's not the case at all.

**Mr. James Wardlaw:** Great.

**Mr. Charles Sousa:** The fund has been funded by the industry to enable consumers to be protected, and it would be managed by a governing body.

In regard to the cap—you spoke about interest and the total cost of borrowing—is it your desire to see this the same as in Quebec?

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**Mr. Edward Lantz:** Could I address that?

*Interjection.*

**Mr. Edward Lantz:** Most definitely, with all due respect to the ramifications in regard to the effects of, let's say for example, the rollover for the payday loan

industry. It leads to a lot of anxiety within that particular individual whom it may be happening to at the time.

So as far as the cap is concerned, 35% would be nice. That would bring it down to something that might be a little more manageable for somebody on a low or moderate income.

**Mr. Charles Sousa:** You spoke about the community requiring and needing alternatives and needing support. You talked about the exiting of the marketplace and the fact that some of the other, bigger financials can't accommodate the need from the community. But what happens now in Quebec is that it doesn't exist. Where do those consumers go?

**Mr. James Wardlaw:** One of the themes—I hope it's clear—of our comments today is that people need credit. Everybody needs credit. Everybody has credit. Poor people often have very, very expensive credit. We'd like the provincial government to work with us to figure that out.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mrs. MacLeod.

**Ms. Lisa MacLeod:** Welcome, and thank you for all the work you've done on behalf of your organization and Ontarians with medium and low incomes. You must feel very gratified today that there's a piece of legislation here.

I was interested to learn that you'd done research with approximately 10,000 payday loan consumers. I'm just wondering if you have any qualitative or quantitative research to provide the committee today.

**Mr. James Wardlaw:** There was a qualitative study that we put together three years ago, I think. If the committee doesn't have it, the minister's office certainly does. We don't have any qualitative information that's comprehensive that's based on the 10,000 people we've spoken to.

**Ms. Lisa MacLeod:** So that's largely anecdotal, then?

**Mr. James Wardlaw:** Yes.

**Ms. Lisa MacLeod:** Secondly, I just want to go further than my colleague, the parliamentary assistant, with respect to—you cited Manitoba, that the interest rate there was set. It does look like it may impact the payday lending industry there and, I want to say the reputable payday lending industry, because we must always be cognizant of the fact that we have two or three separate industries out there. We've got the loan sharks in the community, we've got Internet payday lending and then we have folks here who are part of a larger association who have a code of ethics.

If you were to tackle those folks and essentially put them out of business, where would you expect those folks who have created a niche market in this country for such lending—I would be interested to hear.

**Mr. Edward Lantz:** My answer to that would be that it's time for the big banks to step up to the plate and recognize this problem. They have all the facilities at their disposal to offer a very low-rated interest rate to somebody who might be struggling. With the amount of money that the financial institutions are making today,



most definitely they could implement a plan that would be suitable for somebody in a low or moderate income at a reduced rate and therefore, also at the same time, offer them educational packages so that they would become a little more aware of how they would approach a financial situation such as the one they're in.

**Ms. Lisa MacLeod:** As Visa says, though, "If life were like that."

In any event, I want to move forward just a little bit in terms of the educational fund, the payday lending educational fund that the ministry is setting up. I'm personally of the view that that's just another bureaucracy and it won't really get to the heart of fiscal literacy in this province. I feel that we might be better off actually spending resources within the Ministry of Education to assist younger people so that we get those kids thinking about getting out of the circle of debt before they actually start it.

I would be interested in ACORN's take on that viewpoint.

**Mr. James Wardlaw:** Whoever runs it has to have a lot of contact with the communities where payday lending exists. So if the Minister of Education can do it, that's fine. We've asked, in our presentation today, to be part of it or for groups like ACORN to be part of it because we think we can do a good job of it.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Ms. DiNovo.

**Ms. Cheri DiNovo:** I'll start where Ms. MacLeod left off. Do you think that you would be an excellent body—I would think you would be excellent—since you have worked in the field and worked with people who are affected by payday lending, to administer such a fund? Do you think you have the wherewithal to do that?

**Mr. James Wardlaw:** Yes.

**Ms. Cheri DiNovo:** Thank you. I have to say, thank you, Ed, thank you, James, for all the hard work you've done on behalf of Ontarians. You're really the only deputant we've heard from today who actually represents the users of the payday lending institutions. I'd like to point that out for the record as well.

We know that banks certainly put out credit vehicles, i.e., credit cards, for 28% interest, and many for much less than that, so do you think that both credit unions and banks should be able to offer micro loans to those who need it?

**Mr. Edward Lantz:** Absolutely. Yes, no question about that. I guess maybe the writing is on the wall in regard to the widening gap between the rich and the poor, so I think it's part of the financial institutions' advantage to step up to the plate and be accountable, to help the general public out.

**Ms. Cheri DiNovo:** Sure. Last question: Do you think perhaps the reason the banks don't do this is that the banks themselves are invested in the payday lending institutions?

**Mr. James Wardlaw:** Maybe; I'm not sure.

**Ms. Cheri DiNovo:** Well, they are. Thank you very much, and thanks for all you do.

**The Chair (Mrs. Linda Jeffrey):** Thank you, gentlemen. We appreciate your being here today.

## SURETY ASSOCIATION OF CANADA

**The Chair (Mrs. Linda Jeffrey):** Our next deputant is the Surety Association of Canada.

Welcome. Make yourselves comfortable. I believe your package is being handed out as you get settled. If you could state your name for the record, and the organization you speak for. Once you begin, you'll have 15 minutes. If you leave some time, we'll be able to ask a few questions. We're glad you're here. Thank you very much for coming.

**Mr. Steven Ness:** My name is Steve Ness. I'm the president of the Surety Association of Canada.

**Ms. Debbie Pollhaus:** I'm Debbie Pollhaus. I'm the commercial chair for the western region.

**Mr. Steven Ness:** Thank you to the committee for allowing us to be here today. I want to begin by just telling you a little bit about who we are. We are the trade association that represents surety bonding companies across the country. We're the people that provide security and guarantee performance and/or compliance with legislation and various regulations on the commercial side.

To begin, our association is quite supportive of the initiative that led to the introduction of Bill 48, and we applaud the province of Ontario for taking steps to move in this direction. As some members of the committee may know, our association worked closely with the Manitoba department of consumer affairs when they worked on their own changes to regulate the industry in that province.

In Manitoba, our industry took a very active role in devising a form of security to ensure compliance of lenders with the regulation in the form of what we call a payday loan surety bond. In the handout material I provided for you, there's a specimen copy of the bond form that we use in Manitoba which guarantees that compliance.

If we have a concern with Bill 48 as it's currently drafted, it is that, unlike what you have in Manitoba, there's really no built-in provision to guarantee compliance on the part of the industry participants. It does have some provisions and some tools that are available at the minister's discretion. For example, you have section 55, which provides for a fine to be levied upon corporations who are convicted of an offence, and then I think section 59 will impose a penalty, an administrative penalty, of \$10,000.

The point of note, at least from our perspective, is that neither the fine nor the penalty is secured and it's possible, and even quite likely, that if you had a non-compliant lender out there, they may not be in any position to pay or compensate the consumer.

Interestingly enough, the only provision in Bill 48 that currently refers to security is found in section 52, which provides the director with the authority to impose what's called a freeze order on the assets of any non-compliant



licensee. When you go on, though, section 52 prohibits the director from making such an order if the licensee in question posts a bond or any type of security.

Respectfully, we would submit to this committee that that is a totally unworkable arrangement, because that's kind of like going to an insurance company and asking them to provide a fire insurance policy on a building that's already burning. Good luck with that.

Just another point of note: You have in section 18 a provision for transition licences. We suggest that this may result in a high degree of non-compliance, particularly in the early days as this legislation is being adopted, because the industry is going to take a little bit of time to adjust to the new legislative regime. As we've heard in some of our discussions today, like in any other industry there's the good and there's the bad. The bad are going to come to the forefront really quickly and hopefully are going to get weeded out really quickly. It will take some time, I think, for that group to be eliminated.

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I guess why we're here today is that our association, the Surety Association of Canada, strongly suggests that Ontario follow the lead established in Manitoba and require that all licensees and applicants for licence post a surety bond to guarantee compliance with the act and to protect consumers against the financial consequences of non-compliance. We're the guys who are in the accountability business in that regard, and we tend to do a pretty doggone good job of that.

To give you an idea of what a surety bond could provide, first of all it's the prequalification. We don't just give a pot of money to compensate a consumer who may be left short. We review these people and we get to see who are the good apples and the bad apples. We look at their credentials, we look at their financial position, we look at their background, and we provide bonds for qualified applicants. Those who aren't qualified will be eliminated. Yes, then we do provide the security. The surety bond will protect the consumer and the ministry against financial loss that comes out of non-compliance. A good example is when you have a lender who is applying what Ms. DiNovo refers to as usurious rates. The surety bond will then compensate that consumer for any amounts in excess they paid over that regulated rate.

One of the concerns we sometimes hear is availability: Who's going to be able to get it and who isn't? If we structure this properly, as we have done in Manitoba, these bonds should be available to the vast majority of applicants out there at a fairly nominal price. When I say "nominal"—I'm going to say the "minimum premium," in most cases. Minimum premiums can run from \$250 to \$350 for a bond of, say, \$10,000, which is not a lot of money.

Finally, on the administrative side, a bond will tend to reduce the ministry's administrative costs and the administrative burdens by—first of all, we'll do the up-front prequalification. We'll be the bad guys, if you will, helping the ministry out there. And we also pursue claims

recovery. The ministry would simply have to advance a claim against the surety bond, and then we would pursue recovery from there.

Finally, I'm just going to leave you with this pledge: that as we did with the province of Manitoba, we'd be happy to do here in Ontario. We're happy to work with the ministry to come up with an appropriate regime for doing this. We'll help you develop a bond form that's going to meet the needs and the specifics of Bill 48.

With that, ladies and gentlemen, I'll turn it over to you.

**The Chair (Mrs. Linda Jeffrey):** Thank you. We have Ms. MacLeod to begin with. Two minutes.

**Ms. Lisa MacLeod:** I just want to thank you very much for your presentation. It's something that I think ought to be considered as we move forward. I'd be interested in receiving more information on the work that you've done and what you've done in Manitoba, and we'd be happy to consider it as we move forward in the official opposition.

**Mr. Steven Ness:** Happy to do that.

**The Chair (Mrs. Linda Jeffrey):** Ms. Savoline.

**Mrs. Joyce Savoline:** Yes, one quick question: It's my understanding that payday loan companies are charging insurance. Some of them charge insurance on their loans. Are your members in support of this term as it applies to payday loans? There are all kinds of fees that are attached after the interest rate goes on.

**Mr. Steven Ness:** I'm not sure what you mean by insurance. We tend to think of insurance as vulgar. We hold ourselves aside from that. We are a guarantee—it is paid for by the lender, by the licensee, this \$250 over that. In terms of insurance being added to the cost of the loan, that would actually have nothing to do with us.

**Mrs. Joyce Savoline:** But you don't agree with that term, "insurance."

**Ms. Debbie Pollhaus:** That insurance could be in case of an accident or whatever, like you get on your mortgages: You can buy this insurance, so if you can't pay the bills, then the insurance company will. That's totally separate from what we're talking about here. We're talking about: If the payday lender defaults and does not have the capital to protect that, our bond would kick in and cover it to protect the consumer.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** Finally, a financial service I might get behind. Thank you for presenting here today. It's an excellent idea. We were going to propose an amendment of increasing fines, but as you aptly pointed out, if the company's going down in flames anyway or if they're not able to pay the fines, it's the consumer who loses either way. Absolutely, it's something that we would support and something we would support in an amendment.

**The Chair (Mrs. Linda Jeffrey):** Ms. Mitchell.

**Mrs. Carol Mitchell:** I just have a couple of very quick questions. Was this part of the legislation in Quebec?

**Mr. Steven Ness:** I'm sorry?



**Mrs. Carol Mitchell:** In Quebec, when the legislation came forward to regulate payday loans, was this part of the legislation?

**Mr. Steven Ness:** No, it was not.

**Mrs. Carol Mitchell:** So it's only in Manitoba.

**Mr. Steven Ness:** Manitoba, so far. We're going to get there.

**Mrs. Carol Mitchell:** I wanted to give you the opportunity to expand further on how the actual bonding would work.

**Mr. Steven Ness:** In terms of the process, how it's obtained?

**Mrs. Carol Mitchell:** Yes.

**Mr. Steven Ness:** The lender would come to a surety broker, who would go to someone like Debbie, who actually makes an honest living doing these things, to apply for a bond for a payday loan. In Manitoba, I think it's \$25,000—Debbie?

**Ms. Debbie Pollhaus:** It's \$25,000 for the first year per location, and we're looking at working with them to reduce it to \$15,000 in subsequent years per location.

**Mr. Steven Ness:** Debbie and her staff will then do the work, authorize the bond through the broker, at a price of \$500 or whatever. Now that broker has a bond which they post with the ministry. The ministry has it. Should there be claims under it, the ministry would then make a claim on the consumer's behalf for shortfalls such as would be necessary. The bonding company pays the ministry, the ministry pays back the consumer, and we all go on with life.

**Mrs. Carol Mitchell:** And this is a cost that is, I'm sure, a surcharge that's added on in Manitoba—

**Mr. Steven Ness:** No.

**Mrs. Carol Mitchell:** —to the consumer. It's a cost for doing business, so it's a surcharge, so it's added on.

**Ms. Debbie Pollhaus:** It probably is—

**Mr. Steven Ness:** It may factor into the overall cost. That we can't say. But what we would charge would be, as I say, in the neighbourhood of \$250 to \$500.

**Mrs. Carol Mitchell:** That's what I wanted to get a sense of.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for your presentation.

#### CANADIAN PAYDAY LOAN ASSOCIATION

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the office of the commissioner of ethics and integrity. Welcome. Is it Mr. Peckford?

**Mr. Sidney Peckford:** Yes, it is.

**The Chair (Mrs. Linda Jeffrey):** Great. As you get yourself settled, we're distributing your handout. When you're comfortable and you're ready to begin, please say your name and your organization, and then you'll have 15 minutes. After that, should there be any time, we'll be able to ask you questions.

**Mr. Sidney Peckford:** I want to thank the Chair and the members of the committee for allowing me the opportunity to address you this afternoon as you deliberate

Bill 48 and whatever subsequent amendments you might be making in the future.

My name is J. Sidney Peckford. I live in Ottawa. I am currently the commissioner of ethics and integrity for the association. I was so appointed in April 2006, so our office has been up and running for just over two years. The model was developed by Philip Murray, who was a retired commissioner of the RCMP, with the help of Deloitte and Touche, who were contracted by the association to put together the terms of reference for this office.

Briefly, the code of best business practices, which I am responsible for enforcing, was adopted by the association in 2004. The code has 18 sections and is designed to protect consumers. Most important is the no-rollover clause. This means that a member cannot extend an existing loan for a fee. Such loans have been shown to increase the chance of a customer falling into long-term debt. The prohibition against multiple loans means that a customer cannot receive more from a lender than they are approved to borrow. There is also a clause that requires a lender to offer credit-counselling material to customers who have defaulted twice. Our code requires our members to collect in a professional and fair manner. Collateral on payday loans is not permitted by the code.

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Welfare recipients are also not permitted to take loans given at member stores. Given their low and static income, it is unreasonable to believe that a loan given to such individuals would be repaid without hardship to the customer.

We also regulate the term of the loan—no more than 30 days—and the maximum borrowed is \$1,500. In addition, we require members to keep and maintain records of their loans to ensure that when that customer requests this information, it is available to them. Customers have the right to return a loan within 24 hours without fees being charged. The customer is not required to return the loan in its original state, i.e. on a cash card or cheque. So long as the original amount that was borrowed is returned, the loan will be rescinded without charge.

I would like to add that this matter has been tested a number of times by our mystery shops, and we have imposed infractions as they relate to this particular clause. We're monitoring some of them against the association who pays me, and I fine them.

Members are also required to abide by all privacy laws and cannot use their customer lists for marketing purposes. We have also had a problem with this particular section because we've invariably had payday loan companies calling persons at their place of work, which is forbidden. We have also tasked them with penalties as it relates to that particular clause.

Many lenders offer insurance on the loan, but our members are not permitted to require that insurance in order to approve the loan. Loan documents must be clear and understandable to the layperson according to the code. The members must display their CPLA material, as



well as credit-counselling brochures, in the areas the customers can obviously see. Usually that is in the front part of the store, in a pocket clearly displayed so customers can get it.

The final two clauses involve the CPLA much more directly. The code requires the CPLA to investigate any alleged instance of member non-compliance and demands that any complaints brought to the company's attention by the CPLA be resolved within a reasonable time frame, about two weeks maximum.

To ensure that these provisions are followed up by member companies, I have one full-time employee who works in my office as a compliance officer. She monitors a 1-800 line which is Canada-wide—we service right now all of Canada—which is available to all customers at member outlets in the event that they have a complaint or an issue with the way they have been served. In addition, if they believe the code has been violated, they can instigate an investigation by my office by contacting the toll-free line.

Furthermore, we carry out code compliance verification programs through the use of mystery shops of member outlets. We contract a company called Corporate Research Group out of Ottawa, which is national and international—the United States. They do compliance verification for companies like Canada Post and the Canadian Bankers Association. We use similar people. They do that for us. There have been 185 mystery shops carried out by this office since its inception in 2006 by this particular company.

The shoppers apply for a payday loan and then make subsequent visits to check either whether the store would permit a rollover in the event of a likely default or whether a loan can be returned at no cost within 24 hours. I might add that I have imposed financial penalties on rollers also.

There are infractions of best practice with these areas that set a barometer by which to gauge overall compliance. As part of my mandate, I am able to impose sanctions against the stores if, through thorough investigation, they have been found to have contravened the code. I have imposed financial penalties since my appointment to the post as commissioner. To date there have been 14 sanctions issued in the last two years, with fines totalling over \$6,000. If a pattern develops with respect to a store repeating violations, I have the authority to expel them from the association.

Another function of this office is to assist clients who are in default with loans. My compliance officer is responsible for assisting companies in question to work out payment plans that might take into account the particular circumstances of that client so the client can meet his obligation to the lender. In every case that we've had with defaults on loans where we have been involved, where we have received a complaint, nine times out of 10 we've had all the fees, brokerage and interest, waived, because it costs these companies more money to try to collect on a loan than what the outstanding principal was in the first instance. We've been successful in doing that.

That's one of the main functions of our office: to help these people who are in distress.

We are also responsible for supplying educational material to all stores. The material is available to the general public and includes descriptions of the code as well as the basic education on payday loans in general. In addition, we provide specific credit-counselling brochures to all our member stores. We are the ones who supply all our stores—approximately 555 stores across Canada—that are in our association.

You will find in the accompanying material some examples of this material, as well as the last annual and quarterly reports done by this office. Our website is [www.cplaethicscommissioner.ca](http://www.cplaethicscommissioner.ca). Go to it. Review it, if you like, to your heart's content. It's there, it's posted and it gives you exactly the mechanics of how our office operates, how we do our investigations and how we come to a determination if I'm satisfied that a breach of the code has occurred.

We also provide information on our protocol in determining whether or not a code violation has occurred and how it is addressed. I also have separate legal counsel from CPLA, which has been retained by the association, whom I go to for legal advice as it pertains to the code or any nuances that might occur in a particular situation.

In conclusion, I have found, since we started this office two years ago, over 90% compliance of the member companies that we police through our code. Payday lenders, both members of the association and outside it, have co-operated appropriately with us. I might also indicate that we have taken calls from non-member companies, and we also try to assist there when we can.

Those are my remarks, and I'd be prepared to answer questions if you have any.

**The Chair (Mrs. Linda Jeffrey):** Great. We have two minutes for each party, beginning with Ms. DiNovo.

**Ms. Cheri DiNovo:** Thank you very much, Mr. Peckford, for coming. First of all, I want to point out that it says "Office of the Ethics and Integrity Commissioner," but this is in fact a subsidiary of the Canadian Payday Loan Association, correct? You work for the Canadian Payday Loan Association?

**Mr. Sidney Peckford:** They fund my office; that's correct.

**Ms. Cheri DiNovo:** Thank you. And membership is completely voluntary; it's not mandatory in the Canadian Payday—

**Mr. Sidney Peckford:** That is correct.

**Ms. Cheri DiNovo:** Thank you. What rate of interest do you consider usurious? Do you think 60% is too much? Do you think that's usurious, or is it more—300% or 350%? Where would you put it?

**Mr. Sidney Peckford:** That's a very good question. There are only two sections in the code that I enforce right now, and that is a default section and the non-sufficient funds—

**Ms. Cheri DiNovo:** But you know that it used to be 60%. Under the Criminal Code it used to be 60%.



**Mr. Sidney Peckford:** Yes, that's correct. I'm familiar with that. I was a policeman for 30 years. I know what you speak of.

**Ms. Cheri DiNovo:** So basically your members are charging more than that. All of your members are charging more than that right now, correct?

**Mr. Sidney Peckford:** I can't be certain of that. I don't know. I'll be honest with you.

**Ms. Cheri DiNovo:** Okay.

**Mr. Sidney Peckford:** Suffice it to say that if this industry, in the event that the chartered banks and other institutions do not cater to these types of loans—my worry is that if it's too high, we would get back to the old days of loan sharks, and—

**Ms. Cheri DiNovo:** Too low, you mean.

**Mr. Sidney Peckford:** —and their practices are rather dubious.

**Ms. Cheri DiNovo:** Okay. Could you tell me what the difference between a loan shark and payday lender is?

**Mr. Sidney Peckford:** I would think that they don't have any rules.

**Ms. Cheri DiNovo:** Thank you very much. You do what you can.

**Mr. Sidney Peckford:** Thank you very much for your questions.

**The Chair (Mrs. Linda Jeffrey):** Mr. Mauro.

**Mr. Bill Mauro:** Mr. Peckford, thanks for being here today. What percentage of the companies operating in Ontario do you think are voluntary members of your group?

**Mr. Sidney Peckford:** I can't be certain. I don't have the membership, but I would think somewhere around 250 or 300 are in our association in Ontario.

**Mr. Bill Mauro:** How many companies are there? Do we know how many operators there are? You don't know, as a percentage, if it's 20%, 50% or whatever it may be?

**Mr. Sidney Peckford:** Pardon?

**Mr. Bill Mauro:** You don't know what the percentage of operators who are members of your group is?

**Mr. Sidney Peckford:** I would say that only about 40% are in our association in Ontario.

**Mr. Bill Mauro:** Okay. I was interested in a comment you have in your brief here. You're saying that your store operators—they're voluntary members of your group—do not allow welfare recipients to take out loans at your member stores.

**Mr. Sidney Peckford:** That's correct, and we tested that through our Mr. Payday shops, because we have gone in and represented ourselves as being on welfare.

**Mr. Bill Mauro:** When we say "welfare," are we talking about ODSP as well? Are we talking about federal employment insurance?

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**Mr. Sidney Peckford:** No, they can qualify if they meet the criteria.

**Mr. Bill Mauro:** EI can?

**Mr. Sidney Peckford:** That's correct.

**Mr. Bill Mauro:** Okay. But welfare recipients, social assistance recipients in the province, are not eligible at your voluntary member stores.

**Mr. Sidney Peckford:** That's correct.

**Mr. Bill Mauro:** And you're telling me there are about 40% of those that you think are members of your group?

**Mr. Sidney Peckford:** About 40% of the stores in Ontario would be part of CPLA. The presentation that the president will make, who has a fairer—

**Mr. Bill Mauro:** No, no, close enough. So somewhere in that range, about 40%—that's your best guess.

**Mr. Sidney Peckford:** Yes.

**Mr. Bill Mauro:** And you're hoping that they're all complying with not allowing these loans to—

**Mr. Sidney Peckford:** We are currently, as we speak, doing another 50 stores—Mr. Payday shops—right now, right across the country. We are doing that as we speak right now.

**The Chair (Mrs. Linda Jeffrey):** Ms. MacLeod.

**Ms. Lisa MacLeod:** Just a quick point of clarification for everyone, because I think this needs to be answered: It's correct, then, to say that you enforce that 40% of the stores that are part of the CPLA?

**Mr. Sidney Peckford:** That's correct.

**Ms. Lisa MacLeod:** I just have a quick question with respect to the last comment you made. You say, "In conclusion, I have found a high rate of compliance—90%—with the code of best business practices in our member companies," which would be 40% of those operating in Ontario, just for everyone else's clarification.

**Mr. Sidney Peckford:** Yes. It could be a bit higher than that.

**Ms. Lisa MacLeod:** With the 10% who aren't compliant, what's the penalty?

**Mr. Sidney Peckford:** We've already issued \$6,000 in fines. I have one company that we were preparing to impose more sanctions on. We have already imposed a certain financial penalty in the thousands of dollars, and when we were going to the third, they withdrew from the association.

**Ms. Lisa MacLeod:** Okay. Thank you very much.

**Mr. Sidney Peckford:** That's the best I can say to you.

**Ms. Lisa MacLeod:** I appreciate the work that you're doing.

**Mr. Sidney Peckford:** When I was going after them, they just opted out of the association and they became no longer part of my mandate.

**Ms. Lisa MacLeod:** Thank you very much.

**Mr. Sidney Peckford:** Thank you for giving me the opportunity.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Mr. Peckford. We appreciate your being here.

## ONTARIO CONSUMER CREDIT ASSISTANCE

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Ontario Consumer Credit Assistance.



Welcome, Mr. Portelli. As you get yourself settled, we're just handing out your handout.

**Mr. Edward Portelli:** It's not a handout about what I'm going to speak to; it's just a handout for a little bit of reference.

**The Chair (Mrs. Linda Jeffrey):** Okay. That's great. When you get settled, you'll have 15 minutes and we'll be able to ask questions.

**Mr. Edward Portelli:** Thank you. I want to make sure that the issue doesn't stay as convoluted as it is. I've heard a few times tonight people talking about how the usurious interest rate used to be 60%—it still is 60%. I think what we've missed out on is that this industry has been operating illegally for a long time now and they have hidden behind a lot of different issues, like using insurance or using fees. The legal definition of interest is "any amount of money that's charged on top of an amount of money borrowed." So they can call it whatever they want. They've kept the issue confused for a very long time about what's legal and what's not.

Our members at Ontario Consumer Credit Assistance have been advised that due to the fact that we have proven these cases illegal three times, where the principal never had to be paid back, per the courts, currently, there is no advantage to repaying an illegal debt. We are now talking about: What do people do if they're not allowed to borrow it? That's not the problem of the courts; the courts already have an interest rate set that has been deemed to be usurious, which is 60% or above.

Nobody is willing to confess to what's happening, but the interest rates, in my experience, in over thousands and thousands of these cases, are between 300% and 800%. There is no debate here as far as whether you are allowed to lend money—they are allowed to lend money—but any answer other than "60% or less" means that all we've done is legalize an illegal operation, because they have the benefit of bringing it to such a high level of volume.

I handed out an interesting letter that I got from Mr. Peckford, who spoke before me. He indicates on page 2, at the top, that my advice about them not repaying an illegal debt may become wrong if these things become legalized. In my understanding, then, according to the letter you have in front of you, that means they are currently more than aware that it is illegal. So if we're asking an entity that knows it's illegal to police itself, that on its face is ludicrous.

Currently, we have remedies in place for this. If you want to legalize payday loans—less than 60%—that's fine, but there is no reason to bow down to a group of companies that have been breaking the law for so many years.

The other thing is that if they get caught doing it, according to the new law—if the cost of borrowing under the payday loan agreement exceeds the prescribed limits—then they have to pay the money back. If we allow them to give out loans illegally—as Mr. Peckford said, he barely has a handle on these businesses; I mean, 40% of them comply. There's no punishment if you

don't. The average individual who borrows these loans has no strength, no power, no financial background and, most times, doesn't have the financial intelligence to know how to fight for himself. So in the odd, small case where one of these individuals figures out that they've been treated illegally, then the company owes their money back. That part of the law is ridiculous.

As far as prescribed limits, we can argue all day long about the fact that nothing is prescribed here. But any loan for 60 days—\$1,500—any loan over 60% interest is insane and will get these people nowhere. We have dealt with thousands and thousands of families.

As far as no rollovers, they will simply go to another one, jump back and then go to another one. If you squeeze people hard enough and throw them a lead life preserver, they will pay you for it. That's all that's happening.

As far as monitoring, that's terrific. Let's do that. But let's not give them an interest rate that has been proven usurious for so many years. It's insanity. I guess that's it.

**The Chair (Mrs. Linda Jeffrey):** You have given us about four minutes for each party, beginning with the government side. Mr. Mauro.

**Mr. Bill Mauro:** Two quick questions. Can you tell me a little bit about the Ontario Consumer Credit Assistance group? I'm not familiar with them.

**Mr. Edward Portelli:** I don't want to start a whole different discussion, but we have our own private credit-counselling concept. We don't force budgets on individuals. We don't force average budgets where you're only allowed a certain amount for things. We go through their entire life and take all the minimums they need to pay to live.

**Mr. Bill Mauro:** So you're a lending—

**Mr. Edward Portelli:** We don't lend. We are credit counselling, but we're not not-for-profit. Not-for-profit is associated with creditors, and I don't want to do that. What we do is look at the individual's budget, sort out how much they can afford to repay after basic living expenses and make that offer to creditors over a limited period of time. In the case of payday loans, we offer them nothing because we have proven them illegal on too many occasions. It's bad advice.

**Mr. Bill Mauro:** Can you tell me a little bit about the illegal part that you're suggesting? As I understand it, the Criminal Code still says 60%.

**Mr. Edward Portelli:** That's correct.

**Mr. Bill Mauro:** But I think that fees—you referenced insurance and other administrative fees—are not part of that. So what is it that you're saying has been going on that's illegal?

**Mr. Edward Portelli:** Any amount of money, whether it's interest, a fine, a penalty, a tax—anything—is considered interest under law. So add the entire repayment amount and take the interest rate based on the amount of time. That has been proven three times in court at this time.

**The Chair (Mrs. Linda Jeffrey):** Mr. Sousa.

**Mr. Charles Sousa:** Just to clarify the illegality here, I understand that payday loans exist in different pro-



vincial jurisdictions because they've been exempt from the federal case in order for the industry to have the ability to serve the consumer. What we're trying to do here is protect consumers so they have access and have the availability to borrow money.

**Mr. Edward Portelli:** Consumers are protected with a reasonable interest rate. We can have 20 different people explain to you 20 different reasons why 800% is not considered interest. Unfortunately, the law itself says that any amount of money repaid or due for any reason, other than bank service charges, is usurious if it's over 60%. We have proven three times, with judges' backing, that not one of these different scenarios that have been brought up complies with under 60%. We have challenged every single payday loan company in writing and said, "If you believe your contract is legal, then let's bring it to court." Three have tried; three have lost.

So I don't know exactly what we keep bantering about. At the end of the day, it has already been proven. We have chosen to ignore it, because the individual who begs for it, who needs it, doesn't have the same strength as the people deciding what's good for him. That's why the law is there.

**Mr. Charles Sousa:** But you're talking about the total cost of borrowing, as opposed to the interest rate itself.

**Mr. Edward Portelli:** The interest rate is defined as the total cost of borrowing; it's the same definition. The interest is the total cost.

**Mr. Charles Sousa:** You just said that banks are exempt from a usury charge for their fees.

**Mr. Edward Portelli:** They're the only ones; that's correct.

**Mr. Charles Sousa:** An overdraft fee of \$4 on a \$10 overdraft is usury in your definition.

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**Mr. Edward Portelli:** That's why they were exempt; that's correct. But now we're exempting people who are looking to charge more than 60% interest on a loan. If you get down under \$1,500, are we saying that 800% interest, \$8,000 or \$12,000 a year—it's insane. The fact is—

**Mr. Charles Sousa:** I guess I'm just trying to clarify that this is not illegal. That's why we're here: to try to provide legislation to put parameters around the opportunity to protect consumers who are in need of funding beyond—

**Mr. Edward Portelli:** Not at over 60% interest, sir. They're not in need of funding at over 60% interest.

**Mr. Charles Sousa:** That's why we're talking about it right now. I don't want to charge anybody. I'm not suggesting—

**Mr. Edward Portelli:** But the law is already stating that 60%—

**The Chair (Mrs. Linda Jeffrey):** Excuse me, gentlemen. This is not a debate between the two of you.

**Mr. Edward Portelli:** Sorry. My fault; I don't know how the procedure works.

**The Chair (Mrs. Linda Jeffrey):** You should go through the Chair. The conversation—

**Mr. Edward Portelli:** My apologies. I'm not sure how the procedure—

**The Chair (Mrs. Linda Jeffrey):** It's hard for Hansard to capture it if you're talking over each other.

Our next speaker is Ms. MacLeod.

**Ms. Lisa MacLeod:** Thank you very much, Madam Chair. I just would like to be clear, Mr. Portelli, and I appreciate your coming here today: You are advising people who come to see you for credit counselling not to pay back their debts?

**Mr. Edward Portelli:** Not at all. No, I never said that once. Not to pay back debts that have been proven illegal. We have proven it three times. We have standing cases where these contracts are illegal. They're not—

**Ms. Lisa MacLeod:** Okay, you've made your point on that.

**Mr. Edward Portelli:** I don't think I have, actually.

**Ms. Lisa MacLeod:** I guess the point is that two wrongs don't make a right. In this province there's a free economy, and we're allowed at any point in time to go out and purchase things or borrow things.

**Mr. Edward Portelli:** Like cigarettes.

**Ms. Lisa MacLeod:** In any event, I think the real issue here is that we are a credit economy, and we have to deal with the root of those problems. From what I'm seeing here, anyway, I'm going to make a comment: Two wrongs don't make a right. I'm actually shocked that you would tell people not to pay back their debts. I think that if we're going to get people out of the circle of debt, telling them to renege on their responsibilities is probably not the way to go—

**Mr. Edward Portelli:** It's fascinating to me—

**Ms. Lisa MacLeod:** I still have the floor.

I think that's a very important point. This piece of legislation is very important because we are setting a regulatory framework. That being said, we can't protect people from themselves. They can only protect themselves from themselves—

**Mr. Edward Portelli:** Seat belt laws are like that, but that's another point.

**Ms. Lisa MacLeod:** I just think that you may want to—

**Mr. Edward Portelli:** Hold on, ma'am. You're saying I stated that I tell them not to repay their debts. I am telling them that if there is a contract that a judge has told me is not legal, then there is no advantage to repaying a loan shark and to my advising them how much to repay. The contract has already been proven to be illegal, and only in that case—

**Ms. Lisa MacLeod:** On a point of order, Madam Chair: I'm not sure that the office of the ethics and integrity commissioner for the Canadian Payday Loan Association could be considered a loan shark, and I think we may want to consider the tone of this debate.

**The Chair (Mrs. Linda Jeffrey):** Mr. Portelli, could you caution the language you use—be a little less inflammatory.

**Mr. Edward Portelli:** Okay.



**The Chair (Mrs. Linda Jeffrey):** But you can answer the question.

**Mr. Edward Portelli:** I wasn't being inflammatory to the payday loans association. I'm talking about the specific loans themselves that we are advising them not to repay. If the loan contract is illegal, the courts can't view it, and they haven't. They've chosen not to because they're illegal, so what type of advice would I be giving people on how much they should pay back on a loan that's currently not legal? That letter itself asks what happens when they become legal. Then your advice is going to be wrong. If they become legal, my advice will change, but they're not currently legal. We're debating about something I've heard several times: that it used to be 60%. It still is 60%. I think we've missed the point. We've walked past it, because the entity is so big that it seems legitimate. It's not legitimate at this stage.

**Ms. Lisa MacLeod:** Just one final comment, Chair. I think that if you're looking at fiscal literacy as an issue here in Ontario, telling people that they don't need to be responsible is clearly an issue. There has never been a successful prosecution of a payday loan under section 347 of the Criminal Code, and if you could elaborate on which cases you're referring to, I'd appreciate that.

**Mr. Edward Portelli:** I can bring those to your attention at any time. I can submit them. I have an individual coming in in two days for his own, who is going to provide those.

**Ms. Lisa MacLeod:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** Thank you very much, Mr. Portelli. I probably couldn't agree more, really. The New Democratic Party has put forward a bill hard-capping interest rates at 35%. Certainly, we're falling down the middle. Ohio just hit 28%; Oregon, 36%; other states, 36%, 48%. We're one of the few jurisdictions left that hasn't answered with a hard cap on the true cost of borrowing, so none of this getting around the letter of the law or the spirit of the law, but actually putting a stop to these shady practices.

The only point that I think we might have some confusion about is that the problem is we're dealing with a grey area. It's an unregulated financial service in Ontario, and it has been downloaded to the provinces. Unfortunately, that's why it has been taken away from the responsibility of the Criminal Code. So I think you may be mistaken in terms of the legality of the 60%; in fact, I'm pretty sure you are. I'd love to review the court cases afterwards. That's the problem—because if it was de facto illegal, we wouldn't be sitting here having this conversation.

Thank you very much for your testimony here. It's always good to just hear common sense.

**Mr. Edward Portelli:** Sorry for talking out of turn at stages.

**The Chair (Mrs. Linda Jeffrey):** Any other questions?

Thank you very much for being here today.

Our next delegation is Chris Robinson. Is he here? How about Elijah Master Singh?

Neither individual is here. We are scheduled to see Mr. Robinson at 4:30. We've got about another four minutes, so we'll have a recess for five minutes, come back, and hope that these two delegations appear.

*The committee recessed from 1626 to 1633.*

## CHRIS ROBINSON

**The Chair (Mrs. Linda Jeffrey):** Is Mr. Robinson here?

Welcome. Have a seat, please. Committee, can I call you to order, please. Thank you, Mr. Robinson. We're glad you joined us. You have 15 minutes. You speak just for yourself; you're not speaking for an association or anything?

**Mr. Chris Robinson:** No.

**The Chair (Mrs. Linda Jeffrey):** If you could state your name for Hansard, when you begin, you'll have 15 minutes. If you leave us some time, we'll be able to ask questions of you. We have your package in front of us.

**Mr. Chris Robinson:** My name is Chris Robinson. I'm a professor of finance at York University. I have done extensive research on payday loans since 2004, written reports for the federal government, ACORN, and done extensive work for the Public Interest Law Centre of Manitoba for the hearings in front of the Manitoba Public Utilities Board. At those hearings, the Manitoba Public Utilities Board accepted my evidence and my arguments in setting the first rate caps in Canada.

With respect to the Ontario Bill 48, I've made three specific comments about specific items in the bill. I'm aware that at this point you don't change anything anyway, but you have these comments nonetheless.

You don't need subsection 28(1). I think that simply capturing the fee would be much more efficient.

Section 29 is one on which you might get other arguments saying, "No, you shouldn't put this in place." What you're going to have to do is make sure that any costs that are involved in using a debit card are captured. This was an issue in Manitoba, because some lenders will use debit cards, but the user will then face additional fees, and at least one of those borrowers refuses to provide it in cash immediately. You have no choice. If you want the loan, you have to take it on a debit card or wait for a cheque a week later. Consequently, they take it on a debit card, but these debit cards are limited-use and can only be used at a bank or other ATM machine; they can't be used at a merchant, so therefore you have to pay a fee every time you withdraw money from it.

Subsection 31(1) prevents a lender from discounting a loan. This is one that you might also hear suggestions that it's unnecessary and that there are better ways to do it. The Manitoba legislation does it better. This practice, which finance professors like me had thought disappeared—in fact, we tell our students it no longer exists; it turns out it does. The second-largest lender in Canada does it, and in US states where it has not been carefully



legislated they do it. I lend you \$100; I'm charging you \$20 on that, so I'll actually only give you \$80. This is discounting a loan. The loan agreement says you're only paying 20%; you paid \$20 on \$100, but in fact you're paying 25%. You do want to avoid that practice, since the average borrower will not realize what's happening. Of course, it escalates the cost of the loan enormously, since if they actually want \$100 in cash, they now have to borrow \$120-odd.

The bill also recommends a payday lending education fund. I am one of those rare taxpayers who's in favour of higher taxes when used for the right things, but this is a waste of public money. The problem is not payday lending; the problem is lack of financial capacity or financial literacy and, more generally, problems of poverty and social and financial exclusion.

Educating people about payday loans: First of all, nobody will understand unless they've been educated in other matters about financial literacy first, and once they've been educated about those, payday loans fall out very easily. My textbook on personal finance is the standard for use in universities and community colleges across Canada. It's also used in quite a few other countries, in various languages. I spent only a couple of paragraphs on payday loans, because by the time the student gets to that, they will know what it's all about. They don't need to see the words "payday loan"; they just need to look at the terms. So I suggest that you scrap that provision altogether. It's just more money, more work, and it won't actually do any good for anyone.

Regulating rates: Of course, you realize that there are huge amounts of material on this. I was in front of the Manitoba Public Interest Law Centre, working for 11 days for them, in front of the public utilities board—many, many more days on that. There are thousands of pages of material and very complex analytical calculations on this. All I can do is give you the recommendations. I'm not going to be able to do anything else, since your expert committee—or rather the Public Appointments Secretariat—has decided that I'm not competent.

Most of this bill is boilerplate. All that really matters is the rates that the consumers are going to pay and a few other details, which are covered 17 times over in the bill.

I recommend the following rates, and remember, these are not interest rates; these are fees—all in, everything that the person pays. But 16% is not like 16% on a mortgage. This is 16% of the principal, even if you borrow it for one day. In the industry, they talk about dollars per hundred:

- 16% of the principal up to \$500; plus
- 12% of the principal from \$500 to \$1,000; plus
- 10% of the principal over \$1,000.

The first bullet is the one that really matters, because that's where most of the loans are. The average loan is \$300 or \$400. That's where most of the money will be coming from and going to the lender. However, since there's an extensive fixed-cost component to running a payday lender—that is, they have to pay rent; they have to open the building; they have to have staff there all the

time; they have to have telephones, computers etc.; and if they're a chain, they'll have head office staff—any loan costs quite a bit to make. When you get to a \$1,500 loan, it's getting more gravy, but the person who borrows \$100 costs you almost as much to service, and therefore you should be stacking it earlier. There are many different ways of doing it. This is the format that Manitoba chose out of the various ones I offered to them.

I have lowered it 1% from what I recommended in Manitoba on the grounds that Ontario's population is denser. My calculations in Manitoba were very conservative; in fact, a number of American experts believe that I recommended too high a rate. The payday lending industry doesn't feel that, however.

In addition—and there's a provision that there should be extensions but no discussion of them—many payday borrowers can't pay back in two weeks. Think about it. We won't get personal, but how many of you could give up 30% to 40% of your pay next paycheque? I can, but I'm old and practically over the hill. Many of them can't repay. It's not a case of cheating; it's a case of, they can't. In fact, we have a bigger social problem of whether we should try to design some different kind of lending.

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But you can't expect the payday lender to get nothing by having to go through the renewal. You've all heard of rollovers, which this legislation bans. Again, I think the Manitoba legislation was better in simply regulating how they're charged. But if you like, this is how I'm doing rollovers: If they can't pay, charge 2% of the amount owing per week, or part thereof. That is substantial, but it's nothing like the initial fee. It both gives the payday lenders something, so that the payday lenders are not doing rollovers in secret—which is what they'll do, or else, if they can't pay off the first one, they'll go to another payday lender, pay the whole fee, 20% or whatever it is, and then come back to this payday lender and pay off the first one. It becomes revolving credit, except you get charged every two weeks. So this is a compromise. Manitoba went for 1% plus \$10, plus bank service charges.

I don't, as you suggest, add anything for chasing down the credit. That's part of the whole package of what their business costs, anyway; that's what their staff are doing.

There are a million other things we could do, but that's it. I'm happy to take any questions you have.

**The Chair (Mrs. Linda Jeffrey):** Thank you. You've left about two minutes for each party to ask questions, beginning with Ms. DiNovo.

**Ms. Cheri DiNovo:** Thank you, Professor Robinson. I'm absolutely outraged—and I want this to go into Hansard—that you were not considered for an interview for the so-called expert panel. It makes me wonder about the expert panel; it makes me wonder if they're operating in good faith. I would certainly like to see the names of those who were considered worthy to be interviewed for the expert panel presented to this committee. I expect that that will happen next committee, or else you'll have me to answer to. I'm just outraged at that.



I thank you for your time here; I thank you for what you did for Manitoba. I hope we move at least in that direction. I would tend to agree with the Americans that you're being, if anything, far too generous in your total cost of borrowing—which is a term I prefer to “interest rates.” I just want to thank you for taking the time. Again, let's hope that we hear from this so-called expert panel that there are some experts who actually stand up for the consumer on it.

**The Chair (Mrs. Linda Jeffrey):** Mr. Sousa.

**Mr. Charles Sousa:** I have a couple of questions. Subsection 28(1), the broker fee: Right now, we exempt brokers from receiving any fees, just to make it airtight. I think that's the proposal in the bill, to avoid such things.

**Mr. Chris Robinson:** Yes. Do we need to mince words here? You're targeting Cash Store Financial with that. They're the only broker I've encountered so far in Canada. Everybody in the US is abandoning the brokerage model.

The reason that payday lending is so expensive is because it's an incredibly inefficient small business. These guys are making a handful of loans a day. Most of the time, there's nobody there. Consequently, if you now force it so that they have to go through more steps, all you're doing is raising their costs.

**Mr. Charles Sousa:** That's right. So one of the reasons we have that in the bill is to avoid just that.

The other one is: You spoke about the discounting of the advance, so we're doing 100% of the loan so that we know exactly what the total cost of borrowing is to the individual. Do you agree that's a good thing to put in?

**Mr. Chris Robinson:** Oh, yes. That's what I said. I guess what your expert committee is going to be very careful about is everything that gets called “fees,” how they get charged—I mean, the amount of the work and time that we spent; we did mystery shopping; we did everything.

**Mr. Charles Sousa:** Two more things. Subsection 29(2): That's the lender providing the amount of the loan at the time, so that calculations are based at the time that the consumer receives his loan. It's not the other way around; it's not the consumer paying back the loan in subsection 29(2) in that particular instance, just to clarify.

And one more thing. Your rates that you put forward: What is the total cost of borrowing to the consumer based on these rates, say, over a two-week period?

**Mr. Chris Robinson:** How do you want to express the total cost of borrowing?

**Mr. Charles Sousa:** Let's take your 12% for a \$500 loan.

**Mr. Chris Robinson:** No, it would be 17% on the first \$500, plus. It's a stepped rate.

**Mr. Charles Sousa:** Yes, and if I read this right, you're actually endorsing a rollover with the fees thereafter.

**Mr. Chris Robinson:** The alternative, I suppose, is shooting the borrower if he doesn't pay it back.

**Mr. Charles Sousa:** So you actually are saying that rollovers are—

**The Chair (Mrs. Linda Jeffrey):** Mr. Sousa, your time has expired. Sorry. I really pushed the question and I let you get the answer.

**Mr. Chris Robinson:** It's an extension, not a rollover.

**The Chair (Mrs. Linda Jeffrey):** Ms. MacLeod.

**Ms. Lisa MacLeod:** I wanted to thank you for your presentation here today. I'm particularly interested in your comments on the payday lending education fund, and that you believe it's a waste of time and money. I tend to agree that the problem we're facing here in Ontario right now with financial literacy is much broader than what we're dealing with, with respect to payday loans. I think it's a systemic issue that's facing my generation and the generation that's just coming up behind me.

I would be interested in your comments and your recommendations on how we could best address that.

**Mr. Chris Robinson:** I haven't been able to figure out how to do that. The reason is because the amount that a student coming through school now has to learn—I have a 12-year-old, for example—is so much greater than what I had to learn, that if what you do is add somewhere in the curriculum, say, “We'll give you a course on personal finance,” something else goes. Those “something elses” are things that are even more important.

It ultimately seems to me that it has to come from the home, and we're going to continue to have a problem. So right now I don't have an answer, even a utopian answer, for you. I think that anything we do has got significant problems.

**Ms. Lisa MacLeod:** Are you aware of any jurisdiction, whether in Canada, the United States or elsewhere, that is offering fiscal-literacy-type courses that are working?

**Mr. Chris Robinson:** Yes. I couldn't tell you specific ones that are doing it, but it probably wouldn't be hard to find out. Yes, there are schools, school boards or individual schools that offer this, usually at the high school level.

Sometimes it's simply piggybacked into other courses. For example, if you want to understand payday loans, you need the time value of money, and the mathematics for that is taught in high school mathematics. I learned it there. So did all of you, even if you don't remember it.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much. We appreciate your being here today.

Is Mr. Elijah Master Singh in the audience? One more call. Mr. Singh: Is he here?

Okay, we're at the end of our committee hearings today. Committee, we're going to recess until we return on May 28, at 4 p.m., for our additional hearings. We're adjourned.

*The committee adjourned at 1648.*



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# Official Report of Debates (Hansard)

Wednesday 28 May 2008

# Journal des débats (Hansard)

Mercredi 28 mai 2008



## Standing Committee on General Government

Payday Loans Act, 2008

## Comité permanent des affaires gouvernementales

Loi de 2008 concernant  
les prêts sur salaire



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 28 May 2008

Mercredi 28 mai 2008

*The committee met at 1603 in committee room 1.*PAYDAY LOANS ACT, 2008  
LOI DE 2008 CONCERNANT  
LES PRÊTS SUR SALAIRE

Consideration of Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts / Projet de loi 48, Loi visant à réglementer les prêts sur salaire et à apporter des modifications corrélatives à d'autres lois.

**The Chair (Mrs. Linda Jeffrey):** I'm going to bring the Standing Committee on General Government to order. We're here to consider Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts.

## UNITED WAY TORONTO

**The Chair (Mrs. Linda Jeffrey):** Our first delegation is the United Way of Greater Toronto. Could they come forward? Make yourselves comfortable and get yourselves settled. If you're both going to speak, please say your name and the organization you speak for, and then once you've had a chance to do that, you get 15 minutes. If you leave us a little bit of time at the end, we'll go around and the parties will be able to ask you questions. Welcome.

**Ms. Gillian Mason:** My name is Gillian Mason. I'm vice-president of strategic initiatives and community partnerships at what is now known as United Way Toronto. We recently changed our name to United Way Toronto. I'm here with Peter Alexander.

**Mr. Peter Alexander:** I'm Peter Alexander. I'm senior policy adviser. I plan to only speak when spoken to.

**Ms. Gillian Mason:** Thank you very much for the opportunity to address the committee today regarding Bill 48, the Payday Loans Act. My message on behalf of the United Way is not very long and not very complicated. It should not take too much time for me to say, "Well done."

Simply put, we wish to signal our support for this legislation introduced by the government. We also would like to acknowledge the work done and the efforts made by members from all parties to develop some form of industry regulation and consumer protection through various private members' bills.

United Way is pleased to see that the need for regulating payday lenders is something that all political parties in the Legislature indicate they can support. We would like to convey our appreciation that Ontario has taken the opportunity provided by the federal government to regulate this growing niche of financial services.

Having access to capital, as you know, in a modern economy is like having access to arable land in an agrarian economy. Along with knowledge, skills and hard work, access to capital is the building block for economic activity and the generation of wealth. So we recognize that the payday lending industry can and should have a role to play. They can occupy an important niche between conventional lenders who may be more risk-averse, and on the other hand, unlawful or illegal lending—what one might call "under the table" activity—that operates with no framework for consumer protection and can amount to usury.

The Criminal Code of Canada, as you know, makes it a crime to charge more than 60% interest per annum. As we know, without a legal framework in place, a short-term loan from a payday lender can potentially have an effective annual rate of interest far in excess of 60%. As we heard from the minister's parliamentary assistant during the second reading debate on this bill, "Based on a typical payday loan, these businesses lend at an annualized rate commonly in excess of 750% and sometimes even as high as 1,000%."

The law has not kept pace with this new form of lender, and we cannot allow a policy vacuum to implicitly condone lending at criminal rates of interest. I think we can all agree that the public interest will not be served if an industry develops based on a business model of criminal exploitation of the poor and otherwise vulnerable.

Consider a low-income family facing the prospect of hungry children, eviction or another missed car payment that could mean no way to get to work. For anyone in that predicament, there could be a powerful incentive to agree to what seems like a short-term solution but really only digs a person deeper into a hole. It serves the public interest to prohibit lending practices that might look like a solution but in practical terms will only magnify the borrower's problems.

We support legislation that would prohibit a variety of harmful practices that currently exist in the payday lending industry, such as rollovers, back-to-back or concurrent loans, inflated default charges and hidden fees.



United Way started to become aware of the dramatic proliferation of payday lenders in 2007 while we were conducting research into the persistent growth of poverty here in Canada's largest city. Part of the research looked at median income from Statistics Canada, and by mapping that data onto census tracks, we were able to identify pockets of persistent and growing poverty in particular neighbourhoods. Through our dialogue with our member agencies across the city, we followed a hunch, so to speak, that got us wondering about some of the other kinds of changes going on in poor neighbourhoods.

We suspected that another part of the story was the kind of industries that flourish in the context of poverty. Based on our research as published in our report *Losing Ground*—we have a copy of the executive summary here—we estimated that in 1995 there were about 39 payday lending and cheque-cashing outlets in Toronto. In 2007, through our own survey on the ground, we counted 317. That's an eightfold increase.

Our timing was fortunate. While preparing this study, there was a request made for public comments on regulating payday lenders by the Honourable Ted McMeekin, Minister of Government and Consumer Services. United Way Toronto president and CEO, Frances Lankin, wrote to the minister and made two recommendations. I believe you have a copy of the letter in front of you; it's attached to our submission. One was to regulate the industry and the other was to improve consumer education to permit potential customers of payday lenders to make informed decisions. We see the government moving on both these fronts and we commend you for this prudent enhancement to public policy.

We note with favour the amended regulations already made under the Consumer Protection Act that require lenders to provide more information upfront to their customers in a clear, standardized way so that borrowers can compare lending rates.

This is a good start on consumer education, and it appears there may be many more good things to come. We look forward to learning more about the proposed Ontario payday lending education fund to be financially supported by the payments from payday lenders and loan brokers. We agree with you on the need to educate the public, particularly with respect to financial planning. We share your expectation that this can result in better informed consumers.

United Way, through its funding of community agencies, has been involved in aspects of consumer education and financial literacy for some years, and we hope to do more in this area. We remain optimistic that the Ontario payday lending education fund will have a positive impact, and we look forward to more details on how it will work.

We are pleased that your regulatory framework does appear to have teeth. It is sound public policy that lenders who do not follow the rules will risk penalties, prosecution and possibly revocation of their licence. A balanced

approach of meaningful enforcement and enhanced consumer education makes sense to us.

We are not here to claim expertise in the specific regulatory measures that will work best for various financial services. The creation of an advisory panel to recommend a cap on lending rates does make sense to us. It seems likely that over time, as the industry evolves, the community learns about options and consumers make choices. The specific measures for regulating payday lenders may indeed evolve.

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In conclusion, we commend the government and MPPs from all parties for their attention to this important matter, and thank you again for the opportunity to address this committee on this important issue.

**The Chair (Mrs. Linda Jeffrey):** Thank you. You've left about two and a half minutes for each party to ask questions, beginning with Ms. MacLeod.

**Ms. Lisa MacLeod:** Thank you very much for coming today. I appreciate all the work that the United Way does in Toronto, but I particularly appreciate what they do in Ottawa. I just wanted to welcome you here today. I appreciate the amount of effort that you've put into your presentation.

I just had two brief questions. One is just out of interest in terms of your *Losing Ground* report. You were able to estimate in 1995 that there were 39 payday lending and cheque-cashing outlets in Toronto. How did you arrive at that estimation?

**Ms. Gillian Mason:** In that particular case, we used city of Toronto directories. To some extent, it doesn't necessarily reflect what was on the ground because we didn't have the occasion at that time to drive around. But when we compared the directories and then did the drive around, and we saw the number, we're talking about an order of magnitude change.

**Ms. Lisa MacLeod:** Not only in terms of the eightfold increase, did you notice—it's not documented here—where they were located in different pockets in the city?

**Ms. Gillian Mason:** Indeed, and we did map them against the priority neighbourhoods in Toronto, and in fact there is a concentration of the 300-plus in those neighbourhoods. In our *Losing Ground* report, there is a map that indicates where they are. We actually mapped all 300-plus in our report, which is also available on our website for handy reference.

**Ms. Lisa MacLeod:** Great. I only have one other question, and I'm not sure if my colleague does, but we do have a short period of time. I commend you for talking about consumer education and fiscal literacy. That's certainly an issue that I think needs to be addressed, regardless of income. A new generation has become very easily seduced by the credit card economy that we're in today, and with a slumping economy, it could get worse. I'm wondering, do you think the Ontario payday lending education fund might actually just be more bureaucracy, or how, as a major community stakeholder, do you see improving fiscal literacy throughout the province?



**Ms. Gillian Mason:** There are a number of programs that exist in Toronto, some of which we've had a hand in funding, or some of the agencies, I should say, that support them, including St. Christopher House. One of the recommendations in *Losing Ground* was that we would start to put some of our resources behind this. Part of that exercise will be to understand better who is out there doing what kind of work in front-line advice to people living in poverty, with respect to their financial literacy or simple information about access to credit, understanding better what benefits they have access to etc. We're hoping over the summer, actually, to pull together parties from across Toronto to understand who's doing what, and then we're hoping to work with the business sector as well, to see whether or not we can be helpful and fill a niche in supporting that.

**Ms. Lisa MacLeod:** Just a quick—

**The Chair (Mrs. Linda Jeffrey):** Thank you. Ms. DiNovo.

**Ms. Cheri DiNovo:** Thank you both for coming here—big fans, as you know. I tabled a payday lending bill quite a while back that asked for a hard cap of 35%. I see in Ms. Lankin's first recommendation, she's looking for a hard cap too, under the usurious rate of 60%. Our problem with the bill, and we're going to be bringing forth an amendment to this effect, is that there's no hard cap mentioned here for the total cost of borrowing. I really welcome that; it was wonderful to hear from Ms. Lankin that she's looking for a hard cap too.

Number two, about the education fund: We're concerned about it from a slightly different angle. We're concerned that the education fund be managed by some organization that is operating in the interests of the clients of payday lending and not by the payday lending association and its clients. I wonder if United Way would be supportive of such an amendment? This could be yourselves, it could be ACORN, it could be any number of organizations, but we're concerned that this not simply be a way of giving more money back to the industry, but that this really be handled for and about the clients of said industry.

**Ms. Gillian Mason:** Certainly our position is that the complex situation that people in poverty find themselves in financially requires a deft hand to manage the information well and to provide the breadth of information that is really valued, depending on your particular circumstances. Our observation has been that there isn't a great deal or depth or breadth of expertise on this in the community, and so I think we all have to be very thoughtful about whom we support in actually carrying out that kind of activity.

**Ms. Cheri DiNovo:** Is this something that United Way itself might be interested in managing?

**Ms. Gillian Mason:** Good question. We're a busy lot at the moment, so we certainly would like to be brokers and involved in the decision-making.

**Ms. Cheri DiNovo:** Thank you very much.

**The Chair (Mrs. Linda Jeffrey):** Mr. Sousa.

**Mr. Charles Sousa:** Thank you very much for attending. We appreciate the leadership that United Way has come forward with on this and the work that you do.

In regard to the industry itself, do you see the need for the industry and the continuation of this industry to continue to be in effect for the consumer?

**Ms. Gillian Mason:** We certainly see the need for the kind of service that is provided; yes.

**Mr. Charles Sousa:** Right. And I appreciate your comments around the education fund. That's a big part of our bill, and we took into consideration some of the requests made by the United Way and the leadership you've taken in this realm. We see that also as an important factor of the bill.

In respect to the interest rate cap, we've determined that we need to have further discussion with some expert panels. What do you see, then, as a means by which to incorporate the business and the industry in such a way as to enable them to survive with the respective rates that exist?

**Ms. Gillian Mason:** That's a very good question. I'm not sure I'm in a position to answer that question. Peter, you've given this a little bit more thought. Would you—

**Mr. Peter Alexander:** I would just add that I think we don't want to put ourselves in the position of having expertise in financial analysis or actuarial considerations and so on that we don't possess. I think our point is that there's a rate that would be too high and a rate that would be too low. We would invite other people with more expertise to provide advice to the government on that. We're very pleased that the government has gone as far as it has. That would represent the extent of the highly technical advice that we feel comfortable providing to you.

**Mr. Charles Sousa:** Thank you for your time.

**The Chair (Mrs. Linda Jeffrey):** Thank you for being here today. We appreciate your time.

#### NATIONAL MONEY MART CO.

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is National Money Mart Co. Ms. Patti Smith, welcome. I understand that we're handing out your package right now. If you could state your name and company name for Hansard, once you've begun, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask you questions.

**Ms. Patti Smith:** Patti Smith, National Money Mart Co.

Good afternoon, Madam Chair and members of the committee. On behalf of National Money Mart, I appreciate the opportunity to appear before the committee to discuss Bill 48, the Payday Loans Act, 2008. I have been the president of National Money Mart since January, 2007, and am responsible for all aspects of the retail side of our business. That would include our operating, human resources, training and education, compliance and product development. I've enjoyed a 15-year history with Money Mart and have served in a number of different



roles within the company prior to assuming the role of president last year.

Money Mart is Canada's leading convenience-based financial services provider and an industry leader in consumer protection. We've established a credible brand in the industry. We first opened our doors in 1982, with the belief of putting people first. Last year we celebrated our 25th anniversary of operation.

We're a founding member of the Canadian Payday Loan Association, which has been working for several years toward regulation of the industry. Our company believes that strong consumer protection that allows for a viable payday loan industry would be very important. We've been national members in good standing with the Better Business Bureau for 24 years and have served as board members for many years as well.

We're proud of the partnership that we have with reputable, not-for-profit credit counsellors, working with programs in each province across Canada. We donate a portion of the funds that they collect on our behalf to help sustain their operations. In Ontario, we work in partnership with the Ontario Association of Credit Counselling Services.

I have brought copies with me of their brochures, which you will find in every one of our stores in Ontario. Inside, it will explain to consumers who they are, how they go about calling and what will happen when they call, to put consumers at ease if they decide to take this approach. In fact, for the past seven years, Money Mart has been making yearly donations to the not-for-profit credit counselling programs in every province across Canada.

We also believe in giving back to the communities in which we operate. Money Mart sponsors a large range of organizations and charities that benefit the well-being of children, support health care, protect the environment and support local amateur sports. For example, once again this year we'll be the proud national presenting sponsor for the Easter Seals 24-hour relay. Money Mart will donate an excess of \$400,000 to this cause, along with hundreds of volunteers to run this program.

Money Mart offers a wide range of products and services to its customers. We find that not everyone really understands the services we provide, so please allow me to speak about some of them.

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Cheque cashing, for example: People often ask, "Why do people use you when they can just go to the bank," so I'll just give you a couple of examples that might illustrate that better. If you're an employee who gets paid on Friday at 5 o'clock and you run to the bank machine to deposit your cheque, in most cases the bank will issue a hold on those funds for two to five days. If you have rent due that weekend or you have plans that weekend or bills due, you really are out of luck until the bank clears those funds on Tuesday, so that would make Money Mart a viable opportunity. Also, we do a lot of work for commercial customers, which would be small business owners. For example, if you had a roofing client who had

just completed a roofing job, he would come to Money Mart with his cheque instead of going to the bank, which would hold it for two to five days, and by cashing it with us, it would allow him to pay his employees on the Friday as well as buy materials for the next job he needs to start, without having the bank put holds on those funds.

We also do foreign currency exchange. Banks have recently made a change in their policies whereby if you're not an account holder and at your branch, you can't do a foreign currency transaction. We have offered foreign currency transactions to all of our customers for years. We offer almost all of the currencies and we keep them on hand. Most often, we have better-than-bank rates, so it's a very convenient option for people.

We also have Canadian and US-dollar money orders available, and we are the lowest-cost provider of those in Canada. So if you are someone who purchases things online or you have American magazine subscriptions, this is a very easy and cost-effective way for you to make payments into the United States.

We are also the largest North American Western Union agent, which means we do money transfers all over the world.

We're the third-largest tax-preparation company in Canada. We processed about 100,000 tax returns this year for our clients.

And of course, we're the lowest-cost provider of payday loans in Canada.

We offer a very broad suite of financial solutions, with a focus on ease of access, customer service and convenience. Money Mart has been a trusted provider of payday loans for over 10 years.

Our company currently operates just under 500 retail stores in Canada, and 234 of those are located in cities and towns across Ontario. We employ close to 1,150 full and part-time staff in Ontario, whose feedback we solicit annually through employee surveys.

For over a quarter century, Money Mart had prided itself on providing excellent service to its customers. Every day, our front-line customer service representatives witness first-hand why people seek our services. They know the degree to which our convenient locations, late hours, friendly service and speedy processing are valued by our customers.

Earlier this week, the committee was taken through a presentation by Pollara about its fall 2007 survey of payday loan consumers. I cannot stress enough how important I feel the survey's findings are. Too often, legislators only hear alarming anecdotes about consumers who have been harmed by unscrupulous lenders. The Pollara survey delves beyond those headlines to talk to CPLA-member customers, confirming what Money Mart sees reflected in its day-to-day operations. This is knowledge that I personally have gained first-hand, having started out in the business 15 years ago on the front lines. I've seen the demand for the product grow over time to where it is today.



Our consumers are educated, middle-income Ontarians who have been making an informed decision. They're employed, and they have bank accounts. They have salaries that are on par with average household wages. They're educated, and they understand the cost of the product. They do have other options available to them, and they're making a conscious choice in taking out a payday loan. The majority of them pay their loans off on time, as well. We hear every day from our customers how satisfied they are with the service that they receive—over 90% rate our service good to very good.

We're often asked why the payday loan product is necessary. Our customers are typical of those seen right across the industry. They need a payday loan because they've encountered an emergency, or some unexpected situation has come up and they need extra cash. Sometimes it's because they want to avoid paying the higher cost of bouncing a cheque. They really like the ease of a payday loan. It's a quick and easy process, our locations are convenient, and there are no hassles. In response to consumer demand, Money Mart stores are open longer hours and seven days a week.

As a market leader, I can assure you that the demand is there today and has been for several years. It's a demand that deserves to be met by responsible providers working within a legislative framework that protects consumers and encourages competition within the industry. In each one of our branches across Canada, you'll see the CPLA guide to responsible borrowing, which counsels people about the proper use of loans—and I brought some that we can hand out later. It's a guide about using payday loans. Consumers can read through here on why people use payday loans, the proper use of payday loans and what they're intended for, understanding the terms of your loan—so encouraging people to read some of the finer print, and other options. It also lists the Canadian Payday Loan Association, if they have any other questions about members or non-members. This is in every one of our branches. As well, we have the new consumer protection listing all of the best practices that the Canadian Payday Loan Association has implemented with their members. I encourage you to take a look at those.

As I indicated earlier, Money Mart is a founding member of the CPLA. We're very proud of the founding role we've played in forming the association. From the outset, the work of the CPLA has been based on the need to develop standardized practices across the industry that protect the consumer. That's a need that Money Mart understands well. I'm proud to say that Money Mart's own practices served as the foundation for the code of best business practices that was adopted in 2004 by the CPLA. For years, we have lived by those rules because they were the right thing for our customers.

Let me just give you an example of how Money Mart has put its belief in customer protection into everyday practice: We have never allowed rollovers, ever. Rollovers constitute a harmful practice that must be outlawed

across the remainder of the industry. Consumers deserve a very level playing field which ensures that they will not be subject to a cycle of ever-mounting charges if they cannot pay off their loans.

As an industry leader, Money Mart is pleased to see that many of the provisions contained in the CPLA's code of best business practices are reflected in Bill 48. In particular, we note that the legislation contains a prohibition against rollovers. This is utterly essential in this industry. As well, there are restrictions on default charges and the customer's right to rescind. These are all protections that Money Mart has voluntarily adhered to for many years.

Speaking on behalf of a company that's actively sought government regulation for a number of years, I am delighted to see these provisions upheld in legislation. Voluntary adoption of best business practices, as Money Mart has done for years, can only go so far. We need a government-mandated level playing field for all operators so that we deliver industry-wide protection to our consumers.

Money Mart is proud of the leading role we play in the payday loan industry. We are providing customers with a convenient financial product whose demand is clearly evident. We're an industry leader with sound business practices that are rooted in consumer protection. We invite regulation and in fact have been quite vocal in advocating the need for a regulatory framework for several years.

Money Mart is pleased to see legislation introduced in Ontario and looks forward to working with government to ensure that at the end of the day a viable industry is there to meet the consumer demand for the payday loan product.

Thank you very much for the opportunity to appear. If you have any questions, I'm available.

**The Chair (Mrs. Linda Jeffrey):** Not a lot of time—about a minute and a half.

**Ms. Cheri DiNovo:** First of all, could you tell us, Ms. Smith, about the class action lawsuit against Money Mart that is being held in Ontario?

**Ms. Patti Smith:** It's currently before the courts, so I'm unable to speak about that.

**Ms. Cheri DiNovo:** Second question: The Criminal Code defines usurious interest rates at 60%. Would you agree with the Criminal Code definition of usurious interest rates?

**Ms. Patti Smith:** The Criminal Code defines them at 60%. Is that what you're saying?

**Ms. Cheri DiNovo:** At 60%, the total cost of borrowing. Would you agree?

**Ms. Patti Smith:** Yes, I agree that that's what the Criminal Code reads.

**Ms. Cheri DiNovo:** You charge more than that for the total cost of borrowing.

**Ms. Patti Smith:** We charge 59%.

**Ms. Cheri DiNovo:** You actually charge more than that in terms of the total cost of borrowing for most of your clients, according to the Toronto Star and others.



Carol Goar headlined one of her articles “1,000% Interest 1,000% Wrong.” She cited you, among others. We also heard, by the way, ACORN completely refuting the Pollara survey. First of all, the Pollara survey was done by you, by the Canadian Payday Loan Association. Also, it was done by phone, and a lot of the worst-hit clients who are preyed upon by your industry don’t have land lines, don’t have phones, for the obvious reason that they don’t have the money to pay for them.

Finally, Bob Whitelaw, who was the original president of the Canadian Payday Loan Association, has said that you can make money at 28% and under. Would you agree?

**Ms. Patti Smith:** This is an extremely expensive product to offer. There’s an advisory committee being formed to look at the cost of providing this loan. I think they need to take into account the cost of rent, the cost of employees, the cost of capital and the cost of debt.

**Mr. Charles Sousa:** Congratulations on 25 years of existence. I appreciate your comments around partnering with reputable counsellors and others. I think you would appreciate that the bill is there to try to enforce some integrity with some of your competitors going forward.

Two questions: One, it was insinuated yesterday that the industry is owned by the banks. Are you owned or controlled by any major bank in Canada?

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**Ms. Patti Smith:** No, we’re a publicly traded company.

**Mr. Charles Sousa:** In regard to the rollovers, I’m very pleased to hear what you have to say in regard to back-to-back. How do you satisfy yourself that the loans are paid before you provide a separate loan?

**Ms. Patti Smith:** The onus for that is on the customer. They need to bring in proof that the cheque has cleared the bank, or they bring in a bank statement showing that that’s cleared.

**Ms. Lisa MacLeod:** Thank you very much for coming here today. I appreciate that you’ve been a member of the Better Business Bureau in good standing for over 20 years. I think that’s quite remarkable. I also want to personally congratulate you for working up from right at the front line to becoming president. It’s nice to see strong women getting ahead.

**Ms. Patti Smith:** Thank you.

**Ms. Lisa MacLeod:** Congratulations there.

In terms of growth, we just heard from the Toronto United Way. They talked about how the industry has grown eightfold—in the city of Toronto at least—in certain pockets where there are people of low and medium income. I’m wondering if the growth of Money Mart in the city of Toronto has been in low-income areas.

**Ms. Patti Smith:** Our growth follows our customers, and our customers’ average income for the payday loan product is just under \$40,000. So we go where those people live, shop and work. For example, we recently opened a store just off Bloor Street, on Yonge, so we get a lot of people who are shopping and working in office towers and things like that.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today. We appreciate it.

## JUSTICE MATTERS

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Justice Matters, Charles Foster. Welcome, Mr. Foster. As you get yourself settled, we’ll just be delivering your handout before you speak. If you can state your name and the organization that you represent for Hansard, once you begin, you’ll have 15 minutes. Should you leave us any time at the end, we’ll be able to ask questions of your deputation.

**Mr. Charles Foster:** Greetings to the committee. My name is Charles Foster. I’m a Small Claims Court paralegal and the principal of a paralegal firm called Justice Matters.

I’d like to congratulate the government and this committee for introducing legislation to regulate an industry that the courts on numerous occasions have found to be operating in contravention of section 347 of the Criminal Code, and that some of your peers, past and present, have referred to as loan sharks. I wouldn’t necessarily categorize them all that way. Not all payday lenders operate the same, Money Mart being a notable exception, but certainly there are lenders out there who are charging triple-digit and in some cases quadruple-digit interest.

The problem, as I see it, with a typical payday loan is a combination of three factors: number one, you’re dealing with a borrower who is living paycheque to paycheque; secondly, the typical loan involves triple-digit interest; and thirdly—and I think this point may have been overlooked by many—is the fact that the loan is only for two weeks. It is the combination of these three factors, when they come together, that can create a situation that can be very difficult, even devastating, for the borrower of a payday loan, and I’d like to explain why.

When you are dealing with somebody who is living paycheque to paycheque and apparently without any savings, they have a monthly budget and so many things they need to deal with on a monthly basis. They’re going to need to cover their cost of living, be it rent or mortgage. They’re going to need to eat. They’re going to need to clothe themselves. They’re going to need to get to and from work. That encompasses the bulk of their monthly expenses. If anything comes up outside of those expenses, they don’t have any money to deal with this unanticipated expense and therefore they’re going to have a shortfall for that month’s budget.

According to the Pollara study, we know that approximately 60% of users of payday lenders are using them because they have an emergency or some type of unexpected expense, like a car repair. The borrower does not have the monies on hand to cover these emergencies or unexpected expenses, so they go to a payday lender. While the payday lender will provide them with funds to immediately satisfy this emergency or unexpected expense, the end result is that at the end of the month the



borrower still has a shortfall in their monthly budget. All the payday lender does is provide an immediate solution to the problem and take a premium for doing so. But at the end of the day, the borrower still has a gap in their finances. When you're dealing with triple-digit or quadruple-digit interest, the hole in this person's finances is actually worsened.

Getting back to those three factors I mentioned with respect to payday loans, obviously we cannot change the first factor, which is that the borrower is living paycheque to paycheque, but we can look to improve the payday loan product by looking at the other two components.

In particular, I suggest that the term ought to be in excess of two weeks, that the legislation should mandate it for a minimum of 60 days. This would allow the borrower to spread out the cost of this unexpected expense over multiple pay cycles.

I wasn't planning on mentioning this, but there's been some talk about how everyone's glad that the legislation is going to put a prohibition on rollovers. What we've seen in the past is that when a payday loan is due, if the borrower does not have the money, they'll just go to another payday lender, and the prohibition on rollovers will not prevent that. People who come to me often have five or more payday loans, and that's because these payday lenders do not permit rollovers. Thus, they're forcing these borrowers to go to other payday lenders to, effectively, rob Peter to pay Paul. I would suggest that a 60-day term would alleviate part of the problem.

In addition, the interest rate ought to be capped at 60%. Unfortunately, the bill does not explicitly speak to either of these remedies or recommendations that I would advance. The maximum legal rate of interest in this country has been 60% for some time. It's a rate that society accepts as a maximum, and the courts have deemed higher rates to be usurious and criminal. Our concern is that if the government goes beyond the 60%, then what we're talking about is the decriminalization of usury in the province of Ontario, and I'd submit that that would create a whole host of other problems.

Number one, we have seen, and I submit that it would remain the case, that interest in excess of 60% would create hardship for borrowers. I won't provide you with war stories or incidents I've seen. I'm sure that's been well documented in the past and people before the committee have made such submissions.

The second problem with decriminalizing usury is that it will create upward pressure on consumer interest rates. We are already seeing that happen with certain second-tier lenders who are offering interest at 36% to 59% for, of all things, loans to pay off payday lenders. While the people in the room might think 59% is obnoxious as an interest rate, it looks pretty good to somebody who's already paying 590% to a payday lender.

The third problem we'd have with the decriminalization of usury for a select group of people is that it would create a legal paradox. C-26 codified what type of loans would be exempt. For a licensed payday lender, it

would be for loans of \$1,500 or less for 62 days or less. If we take the Manitoba situation—and I would refer you to page 3 of my handout—since we don't know what the interest rate is, and if we hypothesize for a moment that it could end up being 320% like is happening in Manitoba, you could have a situation where somebody could borrow \$2,000 at 80% interest for 90 days. That would not be captured by this bill or the exemption allowed under section 347(1) of the Criminal Code. That product, nevertheless, would be superior to a \$1,000 legal payday loan at 320% interest over 60 days. This then begs the question, since there's been no enforcement against payday lenders in the past, will there be enforcement against these people who lend in excess of 60%, and if so, what type of message does that send to the public when somebody who is technically offering a superior consumer product would be facing charges, where a select few would not?

1640

Lastly, I'd just like to say I understand a business colleague of mine, Ed Portelli, from Ontario Consumer Credit Assistance, was here on Wednesday. He apparently may have raised some issues that were not satisfactorily answered. I am prepared to answer any questions that may have arisen from any of his comments that day.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much. We have two minutes for each party to ask questions, beginning with Mr. Sousa.

**Mr. Charles Sousa:** Thank you very much, Mr. Foster, for being here today. I can appreciate your consideration for extending the amortization of the loan, or the term of the loan, because as it would extend, it would lower the rate.

**Mr. Charles Foster:** Yes.

**Mr. Charles Sousa:** But payday loans by their nature are paycheque to paycheque, hence it could be a two-week period, it could be a three-week period or it could be a monthly period, depending on when the person gets paid. There are instruments that exist to provide loans for individuals outside payday-type instruments which would then extend the term, as you've indicated.

I'm interested in your analysis in respect to what's happening in Manitoba, because we're also looking at that as an alternative or as a means by which to establish a rate. We had a witness here on Monday, Mr. Robinson, who proposed a similar scenario as is in Manitoba.

Your premise is, then, if I understand correctly, that it shouldn't be a payday instrument at all. It should be just a regular loan amortized over a longer period of time to enable the consumer to have a lower rate.

**Mr. Charles Foster:** I don't think we have to contort ourselves into confining it to two weeks just because people are using the phrase "payday loan." The bill allows, or the Criminal Code amendment allows, it to be up to 62 days. So, already it's anticipated that people could borrow for in excess of two weeks. I wouldn't confine ourselves to two weeks just because we're referring to it as a payday loan. Perhaps we could refer to them as



we used to in the past, where you'd have something like a small loans act, and just refer to them as small loans, and stop thinking it's for payday to payday only.

**Mr. Charles Sousa:** Well, something to consider. Thank you.

**Ms. Lisa MacLeod:** On page 3 of your presentation, are you suggesting that it's more feasible for somebody to take out an illegal loan?

**Mr. Charles Foster:** You mean \$2,000 at 80% interest over 90 days?

**Ms. Lisa MacLeod:** Yes.

**Mr. Charles Foster:** Well, what I'm suggesting is, right now you have people who are lending \$1,000 at 520% interest. I'm putting forward as a hypothetical that, if you legalize that, you could have a next tier of lenders manifest themselves, feeling comfortable in knowing that their product is superior to one that is protected by legislation.

We are already seeing people who are on the edge of this, very close to doing it, and I don't believe it will take much to tip them over and to take the first step and try to do this.

**Ms. Lisa MacLeod:** Who?

**Mr. Charles Foster:** I'm not prepared to give any names.

**Ms. Lisa MacLeod:** Quite a statement to make. If lenders such as some of those that are here today, some of those who abide by best business practices under the CPLA—if we were to take away consumer choice by telling them they couldn't be in the market, where would you expect these folks that need payday loans to go?

**Mr. Charles Foster:** I'm not saying to get rid of payday loans or small loans, however you wish to coin them. I'm saying that it can be done and ought to be done at 60%. Money Mart believes, and has said, it can be done at 59% interest.

**Ms. Lisa MacLeod:** I'd like to have some more information from you on the Small Claims Court proceedings where you won a landmark decision against payday lenders.

**Mr. Charles Foster:** I don't believe I used the phrase "landmark." That may have been Mr. Portelli who said something like that.

We've been in court many times, dealing with payday lenders, and I've brought the respective cases here. I do not have copies, because technically I'm not permitted to make a photocopy of a transcript, but I would be prepared to leave the transcript of all the judges' decisions on those cases with this committee.

**Ms. Lisa MacLeod:** Could you read some of them into the record?

**The Chair (Mrs. Linda Jeffrey):** Sorry, we don't have time for you to read into the record, but certainly if it can be made available—

**Mr. Charles Foster:** If there's a way for me to leave them with the committee, I will, if I can get them back.

**The Chair (Mrs. Linda Jeffrey):** I think the clerk will find a way to be of assistance to all the parties to have that information.

**Mr. Charles Foster:** I'll just make note that we've been in court three times. Every single time, the court made a conclusion that the payday lender was operating in contravention of the Criminal Code and denied the payday lender their interest and their principal.

**Ms. Cheri DiNovo:** It was a very thoughtful and provocative presentation, so thank you very much for that.

So you would characterize payday lenders, as now constituted, as being basically the same as loan sharks?

**Mr. Charles Foster:** I would not use that phrase necessarily. I don't feel comfortable using that phrase. To me, "loan shark" also implies some type of threat of violence if you don't pay. But, as I said, many of your peers, including Jim Flaherty and Bob Runciman, have categorized them that way.

I certainly believe they're usurious, and the courts have also used the phrase that they are usurious and not entitled to any repayment whatsoever should they go before the courts.

**Ms. Cheri DiNovo:** Thank you for pointing out that without a hard cap on the total cost of borrowing, really this bill will be a way of legalizing usurious lenders in an unregulated area right now. It's so important.

I brought forward a bill to cap interest rates at 35%. In Ohio, where it's 28%, in Quebec, where it's 35%—I could go through the whole list of jurisdictions—Pentagon military personnel, 36%—do you think it's entirely possible for payday lenders to still make a profit at 36% or less?

**Mr. Charles Foster:** I believe so. Again, I'll repeat that Money Mart maintains that it is making money at 59% interest. We made written submissions back in July when the government was contemplating whether or not it should seek an exemption pursuant to section 347(1) of Bill C-26. In our written submissions, we put together a business model clearly showing how a payday lender could make money at 60% interest.

**Ms. Cheri DiNovo:** Finally, it has been raised at this committee that banks are not invested in payday lenders. We happen to know that banks are invested in some payday lenders. Has that been your experience as well?

**Mr. Charles Foster:** I am unaware of who the investors are of any particular payday lender.

**Ms. Cheri DiNovo:** Okay. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today. We appreciate your time.

#### TORONTO AND YORK REGION LABOUR COUNCIL

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the Toronto and York Region Labour Council. Is it Ms. Persad?

**Ms. Judy Vashti Persad:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Great. Make yourself comfortable. I understand you have a presentation that you'll be submitting to us after you've spoken?

**Ms. Judy Vashti Persad:** Yes.



**The Chair (Mrs. Linda Jeffrey):** If you could state your name and the organization you speak for, for Hansard, once you begin you'll have 15 minutes. Hopefully you'll leave some time at the end for us to ask questions of your deputation.

**Ms. Judy Vashti Persad:** Thank you. My name is Judy Vashti Persad. I am with the Toronto and York Region Labour Council. First of all, thank you for the opportunity to present our position on the payday loan legislation.

The Toronto and York Region Labour Council is made up of over 150 union locals, and we represent 195,000 working men and women in the city of Toronto and York region. During the past two years, we have been working with local community organizations throughout Toronto—in Rexdale, Scarborough, Jane-Finch, Thorncliffe-Flemingdon and south Etobicoke neighbourhoods—organizing town hall meetings around our campaigns. One such campaign was around raising the minimum wage.

We listened to people's life experiences of survival, stories of working and still living in poverty. People spoke of being trapped in poverty, working for low wages and having to work two to three jobs to support their families, to make ends meet. But people were trying to get out of poverty.

We are pleased that the government has recognized the need for legislation to regulate the payday lending industry. We are encouraged that there will be a licensing of all payday lenders, that there will be inspections and that there will be a ban on hidden fees that have caused so many problems for low-income people. However, we are extremely concerned that Bill 48 fails to put a cap on the interest rates charged by lenders. Waiting longer for an advisory board of experts to talk and then decide and recommend a cap on the total cost of borrowing is not acceptable from our point of view.

Is it acceptable for low-income people to continue to be pulled into and trapped in a cycle of debt? Is it acceptable to allow the payday lending industry to get away with targeting the lowest-income neighbourhoods, feeding off the poverty in our city and in our communities and feeding off people who are financially excluded from using banks to get small loans?

1650

The United Way of Greater Toronto's report, *Losing Ground: The Persistent Growth of Family Poverty in Canada's Largest City*, states that there were 29 payday lending locations in 1995. In 2007, there were 222. Their drive-by audit identified 317 outlets.

Payday lenders are being set up in the lowest-income neighbourhoods. They are targeting poor neighbourhoods. Who are the majority of people living in these poor neighbourhoods? I speak to you as the Toronto and York Region Labour Council, but I also speak as a woman of colour. According to Statistics Canada, 38% of women of colour receive poverty wages. The Colour of Poverty campaign states that 59% of poor families in Toronto are from racialized communities.

The government of Ontario is speaking of poverty reduction and for children living in poverty. Let us get children out of poverty by breaking the cycles that trap families in poverty. There must be recognition of the vicious cycle of payday lending and that this cycle must be broken. Including, as part of this legislation, a cap on the interest rate would be a great anti-poverty strategy and of course an immediate one.

We are pleased that the legislation requires payday lenders to contribute to a public education fund but support the call for this fund to be controlled by consumer organizations, community organizations and credit unions, as opposed to the payday lending industries. This fund should support financial literacy initiatives in local communities.

Lastly, the existence of payday lenders is a symptom of a larger problem, in our opinion. In low-income neighbourhoods, mainstream financial institutions are moving out and the void is being filled with fringe financial institutions. Payday lenders are then stepping in to fill a need for small amounts of money. We need the government to take this legislation a step further and set up a standing committee to work with credit unions and banks to develop strategies to help low-income communities get their banking needs met.

Once again, thank you for this opportunity to present to this committee. I personally am no different than a person who uses a payday lender. My question to you will be, are you? Maybe by opportunity, access and privilege, but we all want to support ourselves and our families and live a life that is meaningful to each and every one of us.

Let us develop opportunities and strategies for those communities and those people in our communities who are pushed into using payday lenders. Please make this legislation truly valuable by including a cap and lowering the cost of payday loans.

Thank you very much for this opportunity.

**The Chair (Mrs. Linda Jeffrey):** Thank you. You've left about three minutes for each party to ask you questions, beginning with Ms. MacLeod.

**Ms. Lisa MacLeod:** Thank you very much, Ms. Persad. I thought you had a really good presentation. I thought you painted a good picture of why we're here.

I was really interested in how you discussed the cycle of debt in Ontario and the educational funds that are needed. I thought it was a very interesting take, actually, from someone who agrees with the bill. I'm always wondering if there's a better way to deal with the fiscal literacy issues that we have in Ontario. I was really taken with your ideas that a fund be led by credit unions and other service groups throughout the province. I'm wondering if you could elaborate on that.

**Ms. Judy Vashti Persad:** It would not be, in my opinion, something that's just led by credit unions. In all of our work, we strongly support the involvement of the people who are affected by the issue or the legislation. So if something is going to be set up to benefit the individuals and families in poor communities, they also



need to be involved in determining what the strategies are, what the areas are that need educating on. Personally, I learned financial management from my mother. How do we get adults, how do we get families—is that the answer?

Again, that's just one piece of it. Being trapped in poverty is not so much an individual problem, that there is a mismanagement. We have to look at the structures that keep people in poverty. I think one of the things—this is just a small part of it; why we're saying there needs to be a cap on interest rates is that that's such an immediate way of helping families and individuals get out of poverty.

**Ms. Lisa MacLeod:** Could I just ask one quick question relating back to fiscal literacy, though, in those communities? You talked about the need for adults to have this. I'm wondering, do you not think it needs to start a little bit earlier, with children in school, whether it's in grade 10 or 11, through a math class, that we're actually teaching kids the fundamentals of fiscal literacy? You mentioned yourself that you learned how to financially plan from your mother. This isn't the first time that we're hearing, in life, that parents are working. They're not getting what they used to get at home anymore. It's just the reality of parents working. I'm wondering if you think that there is a need to teach kids at an earlier age.

**Ms. Judy Vashti Persad:** On financial literacy?

**Ms. Lisa MacLeod:** Yes.

**Ms. Judy Vashti Persad:** I think that's something everyone in our society learns, right? But again, it worries me that that would be the focus. I think education is important, of any strategy—if you're taking something down into communities, just talking with the communities and finding out what is important to them.

So I can't really sit here and say, "You know what? A literacy program needs to incorporate this, this and this, start at this age and end at a certain age." Education in our society, to me, is always important. But if children grow up seeing their parents having to work three jobs, and yet having to go every paycheque to borrow money, then continually being trapped that way, what is the message given to children? To me, there's a larger picture here.

**Ms. Cheri DiNovo:** Thank you for coming, Ms. Persad. Just going back, I've been asking other deputants about the role of the banks in the payday lending industry. I understand—I was just looking at this file here—that the Toronto Dominion Bank, for example, has 250,000 shares in Money Mart, one of the deputants here. The Royal Bank has invested in the payday lending industry as well. I just want that on the record. So we have major banks here now propping up what is a usurious industry.

Would you agree that anything over 60% of total costs of borrowing—interest rate—is usurious? That's the Criminal Code definition. Would you agree with that Criminal Code definition of what a usurious interest rate is?

**Ms. Judy Vashti Persad:** Definitely. Toronto and York Region definitely agrees that that would be the highest it should be. It should actually be lower than that.

**Ms. Cheri DiNovo:** Absolutely. A number of jurisdictions, as you're probably aware, have lower interest rates, Ohio being the lowest that I'm aware of at 28%, Quebec at 35%—hard caps. There are still payday lenders in Ohio seemingly making money at 28% or less, and of course now Manitoba has come in. The Pentagon: 36% for military personnel. All of these organizations and a number of others—Delaware, and I could go on—have hard caps.

One of the fears is that, because they have hard caps and we don't, payday lenders will essentially invade Ontario as the last fertile ground for usurious lending rates. Would your clientele be worried about that too? So instead of having a tenfold growth, let's say, in payday lenders, we'd have a twentyfold, thirtyfold growth, and instead of borrowing from one to another to another, they'd just keep going. Is that a fear of your?

**Ms. Judy Vashti Persad:** It is definitely a fear of mine and of the councils. I think that's why we brought up the point of looking at strategies to assist low-income communities and low-income individuals in getting these small—it's really small loans. So how can our financial institutions help and work in that way? Maybe we need to look outside of the parameters we have in our financial institutions, to look at ways of making it work for poor communities, for people of colour living in those communities, immigrant people, poor working people who work hard. We just have to find a way to do that. This is what we hear.

When we go to community organizations, we hold town halls, like on the \$10 minimum wage. People said, "Yes, a minimum we want is \$10.25 now, but there's so much more we also need in our lives."

1700

This was one of the items that was identified, as well as good-paying jobs. So I guess I just urge the committee to look at a larger picture and look at a way for us to get these individuals and communities out of poverty.

**Mrs. Carol Mitchell:** Thank you, Judy, for your presentation. It was very thoughtful, and you've put a great deal of work into it, so I thank you for that.

I wanted to give you the opportunity to tell the committee what you would recommend as a percentage for the cap.

**Ms. Judy Vashti Persad:** The Toronto and York Region Labour Council works closely with ACORN. I know they have made a presentation. We would take our guidance from ACORN. In speaking with them, they have recommended anywhere from 40% to 60%. It's a hard thing to identify. It depends on what it's going to include, how you're going to determine it. We would give our support to what they are calling for.

**Mrs. Carol Mitchell:** So your recommendation is somewhere from 40% to 60%. Have you had the opportunity to see what has happened with the hard cap that was put in place in Quebec and the changes that resulted



because of that hard cap? It being too low is the argument that's been made in Quebec.

**Ms. Judy Vashti Persad:** Have I had the opportunity?

**Mrs. Carol Mitchell:** Yes.

**Ms. Judy Vashti Persad:** No, I haven't.

**Mrs. Carol Mitchell:** You won't know this, but I'll share this with you. I represent a rural area, and the financial institutions we rely on in rural Ontario are credit unions. Because of the absence of banks, we have more credit unions. One of your recommendations was that the credit unions—you said, "controlled by credit unions." I just wanted to give you a chance to speak to that. I don't think that's what you meant, maybe, but you were looking for direction from financial institutions such as credit unions?

**Ms. Judy Vashti Persad:** With regards to—

**Mrs. Carol Mitchell:** Your recommendation was, "controlled by credit unions." I don't want to put words in your mouth.

**Ms. Judy Vashti Persad:** This is regarding the fund?

**Mrs. Carol Mitchell:** Not the fund, but I'm going to say the conduct of the payday loans and that type of thing. I'm assuming that's what you meant. I just want to give you the opportunity to speak to it.

**Ms. Judy Vashti Persad:** When I was speaking of the credit unions, I thought I was speaking of the fund that would be developed around the literacy. That's what I referred to.

**Mrs. Carol Mitchell:** So your thoughts are that it's the education fund that the credit unions and the banks could provide input into. I want to give you the opportunity to expand on it.

**Ms. Judy Vashti Persad:** Well, I think the credit unions, working with community organizations and consumer organizations, could come up with a strategy of how this money would be used. I guess my concern would be that it does not go into the hands of the payday lending industry to use for their purposes. That would be our concern.

**Mrs. Carol Mitchell:** So you're looking at it as—you support the educational component but you want to ensure that it is driven by the community.

**Ms. Judy Vashti Persad:** Yes.

**Mrs. Carol Mitchell:** Okay. Thank you.

**The Chair (Mrs. Linda Jeffrey):** That completes our time with you. Thank you very much for being here today. We appreciate it. We have your presentation, I believe? Yes. Great. Thank you very much.

#### PARKDALE COMMUNITY LEGAL SERVICES

#### WORKERS' ACTION CENTRE

**The Chair (Mrs. Linda Jeffrey):** Our next delegation: Parkdale Community Legal Services and the Workers' Action Centre. Welcome. Make yourself comfortable. If you're all going to speak, could you say your

name and the organization you speak for so that Hansard has a record of that. Do you have a handout today?

**Ms. Sonia Singh:** No, we don't.

**The Chair (Mrs. Linda Jeffrey):** Okay. When you begin, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask you questions. The floor is yours.

**Ms. Sonia Singh:** Thank you very much. My name is Sonia Singh. I am a staff person with the Workers' Action Centre. My colleagues here are Chris Ramsaroop and Ben Rossiter from the Parkdale Community Legal Services, workers' rights division.

The Workers' Action Centre and Parkdale Community Legal Services work with people with low wages and precarious work to provide support around workplace problems. Our members are mainly immigrant workers, workers of colour and women. We know that many of our members are forced to use payday lenders and cheque-cashing outlets due to financial difficulties, often due to low wages or other employment standards violations that cause financial difficulties. So we are certainly in support of increasing regulation for these types of businesses, and we feel that it's a very important step in addressing the types of pressures that are pushing low-wage workers further into poverty.

I want to thank the standing committee for giving us this opportunity today to address you and to provide some of our recommendations.

As I'm sure the committee has heard from previous presentations, we know—as presented, for example, in the United Way report *Losing Ground*—that there has been a lot of documentation of what a lot of our members have been describing as a huge increase in payday lending operations in our city. As you've likely heard, the United Way found that there were more than 317 outlets in Toronto alone in 2007, and this was a huge increase from the 39 locations they had documented in 1995. It's certainly no surprise that these locations were increasingly found to be in low-income neighbourhoods.

We have to ask, who is it in our city, in our province, who are living paycheck to paycheck, who would require the services of a payday lender?

We know that people who require these services are workers who are earning minimum wage, who are working two or three jobs just to survive. We know that even with the increase of the minimum wage to \$8.75 this past March, minimum-wage earners are still \$4,000 below the poverty line. That shortfall has to be met somehow. We know that it's workers who have faced bounced cheques and other employment standards violations, who need income immediately, who are using these services. We know that it's low-wage workers who cannot access loans, credit cards or other types of credit from mainstream financial institutions. And we certainly know from our experience that as poverty is increasingly racialized and gendered, it is workers of colour, it is immigrants, and it is women, who are increasingly concentrated in low-wage work.



As has been quoted by the United Way, "Those least able to afford credit end up paying the most for it."

We know that research by a whole variety of community organizations and academics has shown that low-wage workers are ending up in a spiral of debt, paying astronomical interest rates, anywhere from 300% to 1,000%.

We have to ask, why is it that low-wage workers are absorbing these kinds of enormous costs, when other citizens who have access to credit can pay interest rates between 10% to 20% on a line of credit, on a credit card cash advance, on a bank loan?

We very clearly feel that we must see a cap on fees and a fair interest rate clearly articulated in Bill 48, and when we get to our recommendations, we'll speak more to that.

I want to introduce a member of the Workers' Action Centre, Robert Keller, who will just add a few more points in terms of why we need to see regulation of these businesses.

**Mr. Robert Keller:** I'm here today to add input into the decision-making process on legislation on payday loans, to help find a reasonable perspective on interest rates and how they affect working people who use payday loan companies.

I would, first of all, like to say that it is pointless to license these companies without having some limit on what is charged. The payday loan companies say that they are justified in charging such interest rates. Yet, if you look at other companies such as ones advancing money on tax returns, they previously retained more than 50%, in some cases, of people's tax returns. However, after legislation, with 15% on the first \$300 and 5% on the remaining, these companies seem to have managed to stay in business everywhere. The same could be said for pawnshops, where there is strong legislation as to what they can charge for interest and other charges. This pertains to short terms as well, such as 2% per month.

I think there is a need to look at all regulation into interest rates around types of borrowing, and especially the limit, where 60% on loans becomes a criminal matter.

**Mr. Chris Ramsaroop:** The Workers' Action Centre and Parkdale Community Legal Services has five recommendations for this committee:

(1) that a hard cap be put on the interest rates charged by lenders;

(2) that there be full disclosure;

(3) that there be enforcement of the act; we have to ensure that there's hiring of inspectors to actually enforce the act;

(5) language requirements; particularly in communities where English is a second language, we have to ensure that information provided is multilingual, not simply in English;

(6) finally, around interest rates charged on borrowers in default, we think that could be very problematic, and we don't think there should be interest rates being charged on people who have defaulted.

1710

Once again, Sonia has mentioned the fact that many people are from low-income communities, and it's definitely having a tremendous impact on them when they have to keep going through exorbitant fees and exorbitant rates. We think that it's really important, and I guess you've seen various news stories of up to 1000% for some people. We know that there definitely has to be a limit, a limit that's reasonable for people, particularly in low-income communities.

With full disclosure, the loan process should be simple and easy to understand for those who are attempting to borrow from lending agencies. We urge the government to undertake, in the language of the act itself, provisions where payday loan agreements must disclose to borrowers the annual percentage rate. This means both interest rates and fees combined. Simplifying it to one figure shows the borrower the true cost of the loan.

Furthermore, it is paramount that the government enshrine the rights of borrowers by ensuring that the legislation guarantees that borrowers will be informed of their rights under the new legislation, and this should be multilingual as well.

With enforcement of the act and hiring of inspectors: An act can only be effective if there is enforcement. It is not clear so far what steps the government will undertake to enforce the act and ensure that marginalized communities are provided with the resources to undertake complaints against predatory lending. Is the government committed to hiring inspectors to ensure that the nearly 1,000 payday lending locations are following the act? Will there be snap inspections if community members request this of the government? How many inspectors will be hired to ensure that there's adequate enforcement? Finally, will results of these inspections be posted?

Finally, just around language, both WAC and PLS organize with community members, particularly from racialized and immigrant communities. In the advocacy that we collectively undertake, we see how communities where English is a second language are subject to violations of minimum standards of employment, health and safety, and numerous other violations of their basic rights. We want to ensure that recent immigrants and members of racialized communities are provided with equitable protection under the act. We believe that one way for this to be undertaken is to ensure that information about borrowing loans is provided in languages that are reflected in the community that they're located in. Once again, we have to ensure that it's multilingual.

I think I'll stop there.

**Ms. Sonia Singh:** Just to conclude, the last point, what we would like to say to the community is that we commend you for looking at this issue. We think there needs to be strong regulation, but we really encourage you not to create a second regime where low-income poor people are paying huge exorbitant interest rates while others who have access to other mainstream credit have a different system.



If there is a potential economic downturn, we need to be putting money in people's pockets, not taking money out. This is an important step in breaking the cycle of poverty.

Ultimately, this is just one step that we encourage in terms of a comprehensive anti-poverty strategy to address the roots of poverty. We also need to be looking at increasing the minimum wage to at least \$10.25 immediately and making sure that we do have strong and enforced labour laws, because we see that that is a big reason why people are being forced to use payday lending companies. Thank you very much for your time.

**The Chair (Mrs. Linda Jeffrey):** You've left about a minute and a half for each party, beginning with Ms. DiNovo.

**Ms. Cheri DiNovo:** Thank you for coming here. Just very quickly, without a hard cap on the percentage—my bill brought in a 35% hard cap—Bill 48 basically legalizes usury because it's an unregulated industry right now. Without a hard cap in this bill, that is what's going to happen. That was very well pointed out by our deputant from Justice Matters. You need to be aware of that. It's nefarious in its details, this bill. That means that 60%, which is usurious under the Criminal Code, will be eliminated. No new percentage will be put in place, which is very dangerous indeed. I thank you for your deputation. I would like you to simply affirm what the Criminal Code says right now. Do you believe that a 60% interest rate is usurious?

**Ms. Sonia Singh:** I think that we would certainly like to see an amendment in this legislation for a cap on interest rates far below 60%. I understand that other jurisdictions have looked at 35%. We would even go beyond that and say, "Let's look in the range of 25%." That is what someone who is taking out a cash advance on a credit card or a line of credit—very rarely would you be seeing an interest rate higher than that, so why should we have a separate, higher rate for people who are low income?

**Ms. Cheri DiNovo:** In Quebec, it's 35%; in Ohio, it's 28% right now. So we'll get their bad business if we don't act, and act soon.

Are you also aware that the banks, like the Toronto Dominion Bank and the Royal Bank, are invested in payday lenders, that that's why you don't see banks moving into poorer neighbourhoods and making microloans themselves or dealing with the issue of poverty?

**Ms. Sonia Singh:** No, and that's certainly a very concerning fact.

**Mr. Charles Sousa:** Thank you very much for your attendance here and the thoughtful deputation that you brought forward.

The bill is intended, of course, to protect those most vulnerable. We do have a degree of default, so there's an underlying higher cost of capital in this instrument. I appreciate your recommendations. For the record, the hard cap is one that is being considered with the expert panel. Certainly full disclosure and enforcement are priorities within this act.

The issue of default charges: We're trying to prevent rollovers and back-to-backs, so there is not an intention, then, that as a result, if they default, they've got to continue to pay interest. The education fund would be there to support even those with language skills—and I like that idea, I must admit.

Recognizing, then, that there's a high cost of capital and there are other instruments that exist to support the things that we've asked for, that consumers can get—and yet this particular instrument is being used by those who are using it as a last means or who are unable to source credit elsewhere.

For the record, in Parkdale, are you aware of a bank doing cheque-cashing or discounted services in the area?

**Mr. Chris Ramsaroop:** No, I'm not. But I think it's also not just around Parkdale; it's around other regions as well. I think you have to look at—

**Mr. Charles Sousa:** I just want to clarify the issue of banks taking ownership or having direct influence over the industry. There is a Cash & Save store in Parkdale. Do you know what that is?

**Mr. Chris Ramsaroop:** I have an idea of where that is, yes. But I think that the fact that you're seeing—

**Mr. Charles Sousa:** So you're aware of a storefront called Cash & Save in Parkdale.

**Mr. Chris Ramsaroop:** Yes.

**Mr. Charles Sousa:** It's a discounted service for cheque-cashing and it doesn't charge usury fees. It is the Royal Bank, just to clarify for people, to understand where we're at. What happens, then—

**The Chair (Mrs. Linda Jeffrey):** Sorry, we've exceeded our time. So I'm going to have to let that go.

**Ms. Lisa MacLeod:** Thank you very much. It was a great presentation. You guys did a really good job, and I've written down all of your points. I definitely will take a look at them. I applaud the work that you're doing, because I know it's not easy.

Just quickly—because you are talking about poverty, I think it's acknowledged that people of low income do tend to use this type of service. But there's a larger issue as well: There are a lot of people who are using this service for currency exchange. They're using it for quick cheque-cashing on the weekends to pay right away, as soon as possible. It's a service that was created because there was a niche in the market, quite frankly. So what we're trying to establish here today is the best way to make sure that people have consumer choice, with a fair amount of consumer protection attached to it.

I guess the question that I do have is—you were talking about it in terms of a poverty agenda. I think that if we're going to tackle poverty in this province, we have to do a whole lot more than deal with it just right here in this piece of legislation. And I'm not even sure if this fits in terms of that agenda. But I'm wondering, where will the folks who you represent go if this service isn't available for them? At the end of the day, we have to realize that it's a business. It was created because there was a niche in the market. It's not perfect, but it exists, and it provides a consumer choice. We can't tell people



what to do. We can only make sure that we regulate an environment so that they make their own choices. I would be really interested to know from your perspective from working on the ground how we do that. I appreciate the recommendations that you've given us already, and I'll be very serious in looking at them when we make our amendments with the official opposition. But it's a bigger issue, and I'd just be interested for you to comment on that.

**Ms. Sonia Singh:** I think you raise a good point, that this is certainly not the only measure we'd be calling on the government to adopt in addressing poverty. We have a whole campaign, Ontario Workers Need a Fair Deal, that has a whole range of recommendations that we support. The 25 in 5 Network for Poverty Reduction has an even broader range of recommendations.

1720

In terms of your question about what our members would do if these services weren't available, I think a lot of our members are using these locations due to the need to get income immediately; we need to look at the broader issues of why that is.

Further to Robert's point, when these businesses have been regulated in other jurisdictions, or other types of businesses in this jurisdiction, in Ontario, we have not seen a mass exodus of businesses or tax-refund outlets shutting down, pawnshops shutting down; we've not seen a mass exodus in other jurisdictions where we have seen—for example, Ohio—a 28% annual cap on interest, so I don't think that that's even something we need to be looking at right now. It's about regulating to make sure these businesses are operating in a fair manner. We know they will continue to exist, but the people will not be gouged to the extent that they are right now.

**The Chair (Mrs. Linda Jeffrey):** We appreciate your being here today and your deputation. That was very interesting.

**Ms. Sonia Singh:** Thank you very much for your time.

#### CANADIAN PAYDAY LOAN ASSOCIATION

**The Chair (Mrs. Linda Jeffrey):** Our next group is the Canadian Payday Loan Association. This will be our last deputant today.

Welcome. As you make yourselves comfortable, please remember that we need you to state your name and your organization, if you're both going to speak today, for Hansard. Once you begin, after you've introduced yourself, you'll have 15 minutes. Hopefully, you'll leave some time at the end for us to ask you questions. The floor is yours.

**Hon. Stan Keyes:** Thank you for providing the Canadian Payday Loan Association with the opportunity to present its views on Bill 48, the Payday Loans Act, 2008.

My name is Stan Keyes. I'm president of the Canadian Payday Loan Association. Joining me is Mr. Norm Bishop, who is secretary to the CPLA.

The Canadian Payday Loan Association congratulates the government of Ontario, congratulates the minister, Ted McMeekin, and is supportive of Bill 48.

I'd like to provide a few words about the Canadian Payday Loan Association.

The CPLA is a proud member of the Better Business Bureau and represents legitimate lenders of all sizes, from the smallest to the largest. We represent 20 companies, with 543 retail financial service outlets in rural and urban communities right across Canada. Here in Ontario, the CPLA currently represents eight companies, with 269 outlets.

It's important to note that each of these companies is led by entrepreneurial business people, all competitors who have come together to share a common goal. For four years, they have been calling for legislation and regulation of the payday loan industry, not fighting it.

The CPLA was established back in 2004, four years ago, with a two-part mandate: to work with governments to achieve a regulatory framework that protects consumers and allows for a viable industry; and to enforce a code of best business practices that was designed to protect consumers in the absence of appropriate regulations.

The code is a set of rules that are ethically based, that our members must comply with. It's the most important, most stringent code for payday lenders anywhere, and we are very proud of it.

Our members support regulation that fosters a viable, competitive industry, coupled with strong consumer protection, in order to provide services to those two million Canadians who use payday loans. We believe in educated, informed consumers making informed decisions about their own money.

We remain committed to continually increasing consumer awareness of available credit counselling assistance programs. The code requires every member to have credit counselling brochures prominently displayed in their stores and to advise customers who have defaulted twice within one year of credit counselling services available to them.

What binds our members together is a commitment to voluntarily submit to the CPLA code of best business practices and independent oversight.

On Monday, you heard from the CPLA's independent, arms-length ethics and integrity commissioner. Mr. Sid Peckford monitors compliance with our code, conducts regular mystery shopping of our members' stores and has the authority to fine our members up to \$30,000 per infraction of our code.

The office of the independent ethics and integrity commissioner was created by the CPLA close to two years ago to ensure compliance with our code of best business practices amongst our members.

Commissioner Peckford has a full-time compliance officer who receives complaints from customers and recommends an investigation where required. This officer also seeks redress of complaints that are received from non-members. The mystery shopping conducted by



the commissioner is done independently by trained individuals who specifically look at members' business practices to ensure that the code of conduct is being followed. Notably, there are provincial consumer protection officers who now refer any complaints they receive regarding payday loans to the commissioner's office directly.

I'd like to spend a little time now talking about the consumers who make use of the payday loan product.

The presentation provided to this committee on Monday by Canada's leading polling firm, Pollara, represents the first-ever statistically relevant data collected on payday loan customers in Canada. The survey indicates that customers are educated and informed, and their overall household income is on par with the overall population. They typically seek payday loans to cover emergency situations or unexpected circumstances. Customers often require only a small amount of money to hold them over until their next payday, and prefer to borrow a few hundred dollars rather than getting more credit than they want with a credit card or a line of credit.

Payday loan customers are deliberate in choosing the payday loan product. They have access to a variety of credit options at banks and credit unions but consistently opt for a payday loan. Customers choose the convenience of borrowing small sums of money for short periods of time, and as the poll reveals, the vast majority pay their loans back on time.

Let there be no doubt that there are many examples of payday loan customers who have been taken advantage of by unscrupulous lenders, but this is not the experience for the majority of payday loan customers.

I understand the attraction for the news media and long-time critics of the industry who point to the worst and most abused payday loan customer. But I would ask everyone to closely consider our evidence, available on the CPLA website, which includes Pollara's groundbreaking surveys of customers in several provinces right across the country.

The CPLA is the only national association that has worked closely with governments to introduce legislation and rules that protect consumers and make sense for the industry. We continue to work closely with elected representatives and public servants in provinces from coast to coast. Several elements of the CPLA's code of best business practices are reflected in the legislation that is now before this committee, rules that are already followed by our members. The most important of these is the prohibition against rollovers, a harmful practice that the CPLA and its members banned four years ago.

The legislation also includes a cancellation provision that is similar to the right-to-rescind requirement already contained in our code. The code also places a restriction on default charges, as envisaged by section 33 of the bill before you.

Bill 48 follows legislative changes enacted in 2007 to improve disclosure and transparency for customers. This includes the requirement to prominently display posters that disclose the cost of borrowing for payday loans—

something we advocated for—and the use of a standard form disclosing the details of a loan. By adding to those disclosure provisions by prohibiting rollovers and ending abusive charges, the government will ensure that payday loan customers are able to understand and compare rates and be protected from abusive practices. These are fundamental issues and we are pleased to see them dealt with in legislation.

On a final point, we believe it's very important that all committee members have a full understanding of the product, the industry and the consumer. Therefore, we'd like to offer anyone on this committee the opportunity to visit one of our members' facilities. We believe this would provide members with hands-on knowledge of the experience of Ontario consumers who have come to appreciate dealing with CPLA members.

Madam Chair and members of the committee, thank you for the opportunity to present to you this afternoon. With your permission, my colleague Norm Bishop has a few short comments to make, following which we'd be happy to answer any and all of your questions.

**Mr. Norm Bishop:** I'd like to first make a few comments about bonding. On Monday, you heard from the Surety Association of Canada, who were encouraging the sale of their bonding products as part of the legislation. As a representative for industry, the CPLA is not in favour of a bonding requirement in legislation, naturally, because it adds to the cost of business.

1730

I would ask the committee to consider the following points: First, in the consumer protection area, bonding is customarily used for businesses such as travel agencies; direct sellers or collection agencies in a situation where a consumer is giving money to a company for goods and services that are provided in the future and they haven't received those goods and services at the time; or where a consumer is giving money to a third party, like a collection agent, to whom they do not owe the money—they owe it to another party.

In this case the business, the lender, is loaning their own money to consumers; they're not taking it in. So there isn't the same risk there. In fact, a lender will have their pool of capital out in the field in multiple loans, which in essence acts as security. So we don't feel the security is needed.

Secondly, the provinces of Saskatchewan and Nova Scotia have in fact been licensing payday lenders for several years. They do not have bonding requirements and they have not, to our knowledge, had any problems in forcing compliance with their regulations and regulatory scheme. We're not aware of any province, other than Manitoba, that is in fact planning to introduce bonding requirements.

Thirdly, as you are aware, there are costs to operate a payday loan business and to offer loans. You have to cover rent, staff and things like that. In order for companies to remain in business, lenders have to charge fees that will allow them to recover their costs. If an unnecessary bonding requirement is added, it just adds to



the costs that lenders will have to recover through fees. So at the end of the day, this does not help consumers.

One final point: We heard reference today to a couple of other jurisdictions. For example, the state of Ohio has a 28% interest rate. We'd just like to clarify for the record that that is a new bill that has been passed in Ohio. It's not law yet and will not become law for three or four months, but we've seen that one large company has already announced that they will be closing over 200 stores as a result. Our information is that the remaining stores, that actually remain open, will cease to offer the product if they have a suite of financial products like cheque cashing or currency exchange and can remain viable. They will continue to offer those, but the day that the bill goes into force, loans will no longer be offered. So it will create the situation where access to credit is denied.

Just to give you an understanding of why: We've heard a lot of discussion about interest rates. A 28% interest rate may sound high, but when you're giving a loan of \$100 for a week, that means you can charge 43 cents. Well, you'd have to give a lot of loans of \$100 a week to pay your premise's rent, your staff, your utilities and things like that. So in fact, that does not provide for a viable industry.

Thank you again for allowing us to have the opportunity to appear before you today. We again congratulate the government on moving forward with this important legislation.

**The Chair (Mrs. Linda Jeffrey):** You've left exactly a minute for each party to ask questions, beginning with Mr. Sousa.

**Mr. Charles Sousa:** I appreciate your coming today. I have three issues that I'd like to address. It's my understanding that the banks do not have a controlling interest of any of the payday loan companies out there in Ontario. In fact, the banks are federally regulated through finance and the Bank Act, which has strong provisions, and they are measured through the federal finance ministry. Is that correct?

**Hon. Stan Keyes:** That's correct.

**Mr. Charles Sousa:** We've heard about some of the other jurisdictions. Quebec has established a cap rate. Tell me what's happening in Quebec, noting that you've just mentioned the high cost of capital in this industry.

**Mr. Norm Bishop:** I think it's fair to say that there is no payday loan industry in Quebec. As a result, they have a huge pawnshop industry where you can get that same amount of money. It will cost you more, in terms of a cost, to get those funds. Not only that, if you're borrowing, say, \$300, you'll have to bring in goods as security worth maybe three or four times that amount. So it's not a solution.

**Ms. Lisa MacLeod:** Welcome, Minister—former minister. It's great to see you here. I want to congratulate the Canadian Payday Loan Association for being a leader in terms of regulation here in the province of Ontario and bringing forward a strict code of best practices and best

business practices, but also for employing an ombudsman, who was one of our deputants.

I don't really have any questions. I've read all of your material, and certainly the Pollara and other deputations were extremely helpful. My colleague and I from Burlington would like to take you up on the offer to go to one of the sites of your members. We would like to do it before third reading, and we would like to do it in the least affluent area of this city. Perhaps we could do that together with the United Way, or even our friends here from Parkdale Community Legal Services, and really learn as much as possible. Perhaps our colleague from the New Democrats and the government party would like to do that as well. So I appreciate that.

**Hon. Stan Keyes:** All are invited, and we'll arrange it with you.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Ms. DiNovo.

**Ms. Cheri DiNovo:** As was mentioned by my colleague Ms. MacLeod, you were Minister of National Revenue for the Liberal Party. Is that correct, Mr. Keyes?

**Hon. Stan Keyes:** I was Minister of National Revenue, minister of sport, minister responsible for Canada Post, and minister responsible for the Canadian Mint.

**Ms. Cheri DiNovo:** And just for the record: Mr. Sousa, who's a parliamentary assistant on this, used to work for the Royal Bank, just so we know who we're sitting around the table with.

First of all, the Pollara study was paid for completely by the Canadian Payday Lending Association. Correct?

**Hon. Stan Keyes:** The Pollara study you're speaking to?

**Ms. Cheri DiNovo:** The Pollara.

**Hon. Stan Keyes:** Yes, that's correct.

**Ms. Cheri DiNovo:** Thank you. And rollovers—as we heard deputed here earlier, they don't make any difference, because all it means is that the client goes from one payday lender to the next payday lender. That's the only difference.

Do you consider a 60% cost of borrowing, defined by the Criminal Code, as usurious? Do you consider it usurious?

**Hon. Stan Keyes:** Madam Chair, this is a very important question, and I've heard it repeated on a number of occasions over the last two days of hearings. I think what should be understood is that both the federal government and provincial governments across this country have agreed that the APR, or annualized percentage rate, is the wrong measure for a product that you only offer for two weeks; that is, you lend some money and then you collect that on the next payday.

When the federal government and provincial government recognized that businesses cannot stay in business at a rate of under 60%, and that Canadians have generated a demand for this particular product, then it was necessary that the issue be revisited and that the payday loan per se would not be part or exempt from section 347 of the Criminal Code. So it was left to the provinces then to legislate and regulate a product.



So what has happened now in five provinces across the country? Legislation has been passed. Now the provinces are working on regulations to set a cap on all fees and charges for a loan. Most recently, even Dr. Robinson himself has proposed a rate—not based on an APR, because everyone understands that, again, an APR is a rate that you take out over a year. This is a loan you borrow for two weeks, and therefore a meaningless number is applied. So an amount as a dollar per \$100 borrowed is not only more accurate—not only does it make it very clear for the borrower who enters a store to know exactly what they're paying for to receive \$100, \$200 or \$300 until their next payday, I think it's important that we not prejudge any calculations of what it might cost to provide the product. We very much encourage and congratulate the government on formulating an advisory committee that will hear witnesses and testimony, that will hear what it costs to provide the product to the consumer to ensure, as the minister himself has

stated, a viable and competitive industry coupled with strong consumer protection.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Mr. Keyes. That concludes our time today. Thank you very much for being here today. We appreciate it.

Thank you, committee. That is our last deputant on this issue. I remind you that, for administrative purposes, the amendments must be filed with the committee clerk tomorrow by 5 o'clock, and that this committee will meet for the purposes of clause-by-clause consideration of the bill on Monday, June 2 at 2 o'clock.

I'll also just give a heads-up to the subcommittee members that while we were here, Bill 69 got referred to us, so there will be a call going around, so that subcommittee members should consider their availability when Trevor Day calls you.

That concludes today's hearings. Thank you very much.

*The committee adjourned at 1740.*



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## Official Report of Debates (Hansard)

Monday 2 June 2008

### Standing Committee on General Government

Payday Loans Act, 2008

Chair: Linda Jeffrey  
Clerk: Trevor Day

## Assemblée législative de l'Ontario

Première session, 39<sup>e</sup> législature

## Journal des débats (Hansard)

Lundi 2 juin 2008

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Loi de 2008 concernant  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Monday 2 June 2008

*The committee met at 1402 in committee room 1.*PAYDAY LOANS ACT, 2008  
LOI DE 2008 CONCERNANT  
LES PRÊTS SUR SALAIRE

Consideration of Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts / Projet de loi 48, Loi visant à réglementer les prêts sur salaire et à apporter des modifications corrélatives à d'autres lois.

**The Chair (Mrs. Linda Jeffrey):** I call to order the Standing Committee on General Government. We're here to go through clause-by-clause consideration of Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts. We're going to start with part I, the interpretation, application and administration. Our first motion is on section 1.

**Ms. Lisa MacLeod:** I move that the definition of "lender" in subsection 1(1) of the bill be amended by adding "but does not include a credit union or caisse populaire to which the Credit Unions and Caisses Populaires Act, 1994 applies," at the end.

**The Chair (Mrs. Linda Jeffrey):** Do you want to describe it?

**Ms. Lisa MacLeod:** This came forward from the credit unions and caisses populaires of Ontario, who were concerned that they would be included in this act and have a double regulatory framework. Therefore, I think it's incumbent upon us to recognize the fact that they will receive two new regulatory frameworks. I think it would behoove all of us to understand that the Credit Unions and Caisses Populaires Act, 1994 governs credit unions and caisses populaires. Therefore, I would encourage my colleagues to support this resolution.

**The Chair (Mrs. Linda Jeffrey):** Any discussion?

**Ms. Lisa MacLeod:** Recorded vote.

**The Chair (Mrs. Linda Jeffrey):** Recorded vote for—Ms. DiNovo?

**Ms. Cheri DiNovo:** May I ask for a 20-minute recess before that recorded vote, please? It's within my rights under standing order 128(a), page 61.

**The Chair (Mrs. Linda Jeffrey):** Okay. Can we move on to another section or do you want—

**Ms. Cheri DiNovo:** A 20-minute recess.

**The Chair (Mrs. Linda Jeffrey):** You just want a 20-minute recess? Okay, we're recessed.

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Lundi 2 juin 2008

*The committee recessed from 1404 to 1424.*

**The Chair (Mrs. Linda Jeffrey):** A recorded vote has been requested on the motion put forward by Ms. MacLeod.

## Ayes

DiNovo, MacLeod, Savoline.

## Nays

Kular, Mauro, Mitchell, Sandals, Sousa.

**The Chair (Mrs. Linda Jeffrey):** That motion is lost. Our next motion on the floor, Ms. MacLeod.

**Ms. Lisa MacLeod:** I move that the definition of "loan broker" in subsection 1(1) of the bill be amended by adding "but does not include a credit union or caisse populaire to which the Credit Unions and Caisses Populaires Act, 1994 applies" at the end.

I would ask, Madam Chair, because it's for the same reasons, that we just go forward with the same vote.

**The Chair (Mrs. Linda Jeffrey):** Any discussion? Ms. DiNovo.

**Ms. Cheri DiNovo:** Yes, and I'd like to use my full 20 minutes allotted under page 54, section 108 of the standing orders.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, you have the floor.

**Ms. Cheri DiNovo:** Thank you. My concern is that if this government, as it shows every intention of doing, rushes Bill 48 through the legislative process, that is, by the end of this session, and still does not have any kind of regulatory hard cap in the bill, and still has not struck, to my understanding, the so-called expert committee—one wonders about the expertise of the expert committee since Professor Robinson, foremost expert and also consultant to the Manitoba government when they passed their legislation, and Bob Whitelaw, who was former and in fact the first president of the Canadian Payday Loan Association, were not considered worthy to be experts on the expert panel. But let's say this so-called expert panel sits and then comes back with their recommendations for regulations. It could be another six months at least, and that's assuming the best possible wishes of the parliamentary assistant and the Honourable Ted McMeekin themselves. So in that six months, essentially what we



will have done in the province of Ontario is legalize usury.

Right now there is protection under the Criminal Code for those people who are preyed upon by payday lenders. We heard an excellent deputation from Justice Matters about this very matter, in which Mr. Foster said that they are successfully—and he's not alone in doing this; there's a class-action lawsuit against Money Mart—taking the payday lenders to court on behalf of their clients, getting them reimbursed for the money that was taken from them, we would say illegally, under the Criminal Code. Once this bill is passed—and for those who are reading in Hansard, if not able to watch on the television, this is how nefarious it is—these same individuals will not have that protection in the same way under the Criminal Code. Having had our eyes opened to that fact on behalf of our stakeholders, we certainly do not relish that prospect.

Also, it will allow others, particularly those who are planning to move from Manitoba, Ohio, Delaware and other places and jurisdictions where they do have regulation and do have hard caps, to move into Ontario in unprecedented numbers.

In fact, what seems to be a step forward would be a huge step back. Perhaps the government itself is not aware of this and how dangerous the situation is. Certainly I don't understand why, in the construction of Bill 48, hard caps could not have been put into place or why a so-called expert panel is needed. That has never been explained.

Everyone knows. Everyone has seen what's happened in other jurisdictions. We don't have to reinvent the wheel here, folks. We know the difference between a bill with a hard cap and a bill without a hard cap. We know the difference between a bill that actually accomplishes something and a bill that simply opens the door for even more predatory lending practices than we've already seen.

It strikes me as wild that we can sit around here—again, all of us, probably, who don't have need of payday lenders—and pass judgment, which is what we're doing, on the lives of those who are too impoverished and too tied up with work and concerns to be able to even come and depute here. The best we've been able to hear from in this committee are those who work with them. Hats off to those who do work with them, who have come and deputed on their behalf, organizations like ACORN, Justice Matters and the United Way. But they are not legal scholars. They didn't read this bill—except perhaps for Justice Matters—with a fine-tooth comb. They didn't see the implications of this bill and what this could conceivably bring about.

Again, it is quite staggering that someone who has the means—and most of us in this room have the means—to go to a bank and get prime plus something, in other words, to secure a mortgage at 6% or five-point-something per cent, would then decree that the poorest among us who are living on ODSP or OW, on the welfare system or working for minimum wage or slightly above

it, would be condemned to 300%, 800%, 1,000% real interest rates, not the pretend interest rates; the real costs of borrowing, not pretend costs of borrowing.

There are all sorts of problems in this bill. There are all sorts of amendments that we want to bring forward, one of them being that anybody who has a payday lending licence, if they are to be licensed, should certainly have surety involved. In other words, if they go out of business, how are we to collect on the fines, which are hardly awe-inspiring to begin with, as stated in this bill? That's one problem with this bill right there.

The other problem with this bill is the length of time. As you heard from one of the deputants, the two weeks really imprisons people. If you get a \$300 paycheque and you're borrowing \$100, how can you be expected to pay \$200 back the following week, or \$125? And so it goes. The problem for the people who are using payday lending is that they don't have options. This is where the banks could play a role. This is where the credit unions would play a role if they could.

1430

Since I get to speak for 20 minutes on every amendment, I'm going to happily share with this committee some of the excellent work that's been done by ACORN and others who have spent many, many hours and much research time in looking at this.

Really, what we're talking about here, folks, is loan-sharking. We're talking about something that should be called by its rightful name. In the Criminal Code, it's seen that way. In the Criminal Code, anything over 60% is considered usury. Usury is what we have on every street corner in the province of Ontario, or soon will have, if this bill passes. All of those payday lenders who are flying from other jurisdictions where they actually have the courage and the intestinal fortitude to do something about them will be flying here. They'll be here in droves. United Way, of course, outlined in their report that we've increased the number of payday lenders tenfold in this province in the last 10 years. That's nothing. If this bill passes without regulations in it, you'll see another tenfold increase in this province as well.

Of course, you might see a little turf warfare on behalf of the large payday lenders, the ones that are supported by the banks, with those smaller payday lenders. The large ones might drive the smaller ones out; that's true. There might be a little settling ground, but then rest assured that more will arrive, and Money Mart and those like Money Mart will be opening new branches all across the province. If that's what this bill intends, that's what this bill will get.

What I don't understand is why this committee is reluctant and why the government is reluctant to actually put into the body of the bill something real. Something real would be a hard cap in some way, shape or form on the cost of borrowing. That's after all what we're looking for.

Just posting the fact that you'll be charged 300% to 1,000% interest does not deter people who need to pay the rent. It does not deter people who need to feed their



children. Those who are really desperate will still come to a payday lender and will still borrow. Even if they're educated about the costs of borrowing, the reality is that these are desperate people, and this is an industry that preys upon desperate people.

There is very little difference, actually, from the Tony Soprano episodes and the loan sharks of yore, except that perhaps the threat of violence isn't there. But certainly the threat of disaster is.

The thought that a provision against rollovers is going to change anything is a fool's paradise, because all that means is that somebody going to one payday lender who can't pay it back will then go to the next payday lender and borrow enough from them to pay the first one back. We see this with people with credit cards; why wouldn't we see it with the most desperate, those who can't even get credit on their credit cards anymore, who will go from one payday lender to the next, to the next, to the next? Again, the rollover bill has no meaning if that's in fact the case.

I know that my friend across the way, the parliamentary assistant, seems to dislike it when I speak about the bank's role in this. That's where, in the time allotted to me—and it's going to be considerable—I will go and outline every single share that every single bank has in payday lending. We're talking about Toronto-Dominion Bank, we're talking about the Royal Bank of Canada, we're talking about Scotiabank. There is, of course, an incentive to the banking system to support this kind of legislation because they, through their investments, are making money from this kind of legislation and this kind of industry. There's an incentive for the banks not to make micro-loans, because they don't need to make micro-loans. Their brothers and sisters in the payday lending industry, the usurious industry that it is, are making the micro-loans for them.

There's no incentive for us to look at maybe having credit unions come into the picture who have already offered to make micro-loans at 28%, since why would you lend out money at 28% when you can get 385% or 685% or 1,000%? As Carol Goar said in the *Star*, "1,000% Interest 1,000% Wrong."

The *Star* has been excellent; I must give them kudos for their coverage of this issue, which has been exemplary. What they've done is highlight the fact that what we're talking about here is no different, absolutely no different, from usury, that the Criminal Code has made that clear with its 60% cut-off.

It's amazing to hear the deputants from the payday lending industry when they come in wearing fine suits—I must say, if I were making the kind of profits they are, I'd be wearing fine suits too—and talking about what a service they're providing for such middle-class people. Come on. Give me a break. We all know where the payday lenders are. They're not in Rosedale and they're not in Forest Hill. They're in south Parkdale, in the Junction and in Scarborough. They're across the city and they are opened closest to the poorest. That's where they're opened: closest to the poorest.

I remember very well when I was out campaigning in a Toronto housing project at 100 High Park Avenue; I'll tell you the number. On every door there was a door hanger. That door hanger said "Free coffee and free doughnuts" for those who wanted to come in and cash a cheque just before the government cheques came out. One of my constituents—people are fond of bringing me evidence—brought me evidence of a \$266 free cheque—"free cheque," it said—to anyone, no credit checks; no questions asked. "Just come in with a piece of identification, come in with a pay stub, and we'll give you \$266." What they didn't say, of course, was how much interest it was going to cost them for that \$266.

Hence, we have the stories that have been well outlined in the *Star*: somebody going in for a few hundred dollars, and a few years later finding themselves thousands and thousands and thousands of dollars in debt. That story is replayed over and over again across this province. The way Bill 48 is written will make it more difficult, not less difficult, for those who have been beleaguered, for those who have been put upon by payday lenders, to get their heads above water.

At least now they have the somewhat protection of the Criminal Code of Canada. Thank God for the Criminal Code of Canada. We should all be very pleased that it exists and that it offers some sort of protection, even if it's a protection that has to be told and transferred, in terms of education, to those who are preyed upon by the usurers in their communities. Most people walking into a payday lender think they're walking into a legitimate business. They think they're walking into a business that's sanctioned by law. Little do they know that there's no legal sanction for payday lending. It actually exists in a very grey area. It's the last unregulated lending operation of its kind in Canada, and certainly in most of the jurisdictions in the States.

So what we're talking about here is regulating it. The problem is, if the regulation we bring in, hence Bill 48, is not as strong as the regulation we have, which is the Criminal Code of Canada, which outlines usury as 60%, these poor people are being beset upon right now but—but—still have the legal option of going to court and getting their money back. That's interest, penalties, default, rollover fees and all of those other hidden costs of going to a usurer; they have the legal recourse right now of going and getting that money back. Once Bill 48 is passed into law, they won't have that recourse. That recourse becomes eminently more problematic and difficult.

So really what you're doing is not helping those who are preyed upon by payday lenders. You're pulling the rug out from under their feet. Quite frankly, I won't let that happen. If I have to talk here until 2 in the morning, I'll talk here until 2 in the morning every day. I'm doing it on behalf of all of those out there who don't have a voice, who haven't been allowed a voice by this committee.

If there ever was an instance in this place where you see the difference of class, it's this committee, where we have deputants who can sit here for the entire length of



the deputations and watch and wait; where you have all of those who are the prey of the payday lenders who can't come, who are ashamed to come, who don't want to come, who don't have the time to come, who don't have the means to come, and, by the way, who didn't even know that such a deputation was taking place, because they don't have computers. Many of them don't have phones. As you've heard from ACORN, many of them have had their phones cut off because of the money they owe. That's what we're talking about. We're talking about people who owe thousands of dollars, the vast majority of it in interest, those who are least able to pay it.

1440

Let me tell you about one payday lender in my riding. It's on Queen Street, right across the street from Parkdale Activity-Recreation Centre. Parkdale Activity-Recreation Centre is a drop-in centre for those who have mental health and addiction issues. Is it a surprise, is it an anomaly that this particular payday lender opened up just across the street from those who have mental health and addiction issues? I think not. In fact, there are four within about an eight-block radius of that drop-in centre, a drop-in centre that sees hundreds of people go through every day. I see those same people, once their ODSP or OW cheques come, walk across the street to the payday lender.

Many of these folks don't even have the mental wherewithal to understand the fine print on a payday loan. Most of these people, even if it were explained to them, couldn't get it, but they have what's necessary to qualify for a payday loan at 800% interest, because that's what it's going to be. Imagine if you made just over \$500 a month, which is OW, and you went into a payday lender and got \$100 this week. It will be \$150 the next, \$200 the next. Then you run out of one payday lender and you go to the next and the next. I have seen them patiently explain to somebody who clearly is a victim of schizophrenia what the interest rate is about. Please, give me a break. This is the sort of practice that's going on, and Bill 48 is going to do nothing to prevent that kind of practice—absolutely nothing.

I know that when Mr. Keyes, the former revenue minister for the Liberal Party of Canada, head of Canadian Payday Loan Association, came in, he made an offer to everyone here to go into a payday lender and see what goes on. I'll extend the same offer. If anybody wants to come to my riding, wants to see where the payday lenders are set up, how they market, who they market to, and how they explain what they do to people who have schizophrenia and manic depression, who are on ODSP and OW, I'd love to show them. I'd absolutely love to do a walking tour of the payday lenders and their clients in my riding. I'm telling you, you won't find a Gucci bag among them. No Fendi purses there. You won't find nice shoes. You're not going to find middle-class people. Nobody drives up to a payday lender. If they do, the car is about to be repossessed.

The people who go into payday lenders in my riding are the people who are so desperate that that is their last

chance to be able to get enough money just to pay for the basic needs, the necessities of life. That's why they go to payday lenders. Of course, if you happen to have an addiction issue, you can just add to those basic necessities of life a huge bill for the drug or alcohol of your choice, because many of those I've seen who go in and out of payday lenders are not of right mind. Many of them are, as one would say, stoned. Many of them are under the influence of alcohol. But do they still get their cheque cashed? They still get their cheque cashed.

I would say it's illegal. One would want to call a policeman in. But hey, wait a minute, it's a grey area. Payday lending is an unregulated financial service, so-called. It is unregulated. Well, Bill 48 will simply take the very last regulation that their last attempt to regulate still has. That poor person who comes to the next day or the next week or the next month and realizes what they've done, when they're massively in debt—that person will have the rug pulled out from under their feet because they won't be able to take that payday lender to court, as there is a class action suit against Money Mart, as there are individual suits against a number of payday lenders.

We know that this works. We know it can work for those who are desperate. But somehow get the guidance, somehow get the advice they need—

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, excuse me.

**Ms. Cheri DiNovo:** The 20 minutes are up?

**The Chair (Mrs. Linda Jeffrey):** Your 20 minutes are up.

**Ms. Cheri DiNovo:** Thank you very much. As I understand, there's a—

**The Chair (Mrs. Linda Jeffrey):** I'm going to ask if there is any further debate. Any further debate?

**Mr. Charles Sousa:** I'd ask that the question now be posed to the committee.

**Ms. Cheri DiNovo:** I would ask for a 20-minute recess, please.

**The Chair (Mrs. Linda Jeffrey):** Okay, we'll have a 20-minute recess.

*The committee recessed from 1446 to 1506.*

**The Chair (Mrs. Linda Jeffrey):** Committee, we're ending our recess.

Mr. Sousa has moved that the question now be put, which means that he has asked whether or not we're to move directly to section 1. I can explain it in English: That means the motions that have not yet been put on the table would not be discussed if we move to section 1. That's the question we're being asked now. Okay? There's no debate on this. Ms. DiNovo.

**Ms. Cheri DiNovo:** Yes, actually, there is. Do I have the 20 minutes again to talk about it? I don't?

**The Chair (Mrs. Linda Jeffrey):** Not on this, you don't.

**Ms. Cheri DiNovo:** How much time do I have?

**The Chair (Mrs. Linda Jeffrey):** Nothing.

Are the members ready to vote? This is a recorded vote.



**Ayes**

Kular, Mauro, Mitchell, Sandals, Sousa.

**Nays**

DiNovo, MacLeod, Savoline.

**The Chair (Mrs. Linda Jeffrey):** That's carried. Shall section 1 carry? All those in favour?

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** No, it's not amended. All those—

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** No, please don't correct me. It's not amended.

Shall section 1 carry? All those in favour? All those opposed? That's carried.

Section 2: Ms. DiNovo, you have the first motion.

**Ms. Cheri DiNovo:** If you look at the NDP motion for Bill 48:

I move that subsection 2(1) of the bill be struck out and the following substituted:

“Application of act

“(1) Subject to the regulations, despite anything in a payday loan agreement, this act applies in respect of a payday loan if the borrower, lender or loan broker is located in Ontario when the loan is made or to be made, whether the loan is made or the payday loan agreement for the loan is entered into by means of the Internet or other electronic or technological means that does not allow the location of the lender or the loan broker to be determined.

“Location of borrower

“(1.1) For the purposes of subsection (1), a borrower who receives a payday loan is deemed to be located in Ontario if,

“(a) the borrower is ordinarily resident in Ontario at the time the loan is made; or

“(b) any part of the advance is,

“(i) deposited to the credit of the borrower in a bank or other financial institution located in Ontario, or

“(ii) at the direction of the borrower, paid to any person or entity located in Ontario.”

Essentially, we're suggesting that the Internet not be kept out of the range of jurisdiction of this bill.

**The Chair (Mrs. Linda Jeffrey):** Any further discussion?

**Ms. Lisa MacLeod:** Just very quickly, I support this, and obviously I've got an amendment that will be ruled out of order as a result of this, but I think it's something the committee heard from those who are concerned about the industry: that we must regulate Internet payday loans. So I will be supporting this amendment and I urge my colleagues from the government caucus to support it as well. I think it will strengthen this legislation. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Any other—Ms. DiNovo.

**Ms. Cheri DiNovo:** Yes, just to let you know, I'll be speaking for 20 minutes on this as well.

I am most interested in keeping the Internet as part of the area of jurisdiction of this bill, for obvious reasons: As has been rightly pointed out by just about every deputant, the problem in Quebec, where they do have a hard cap, one that we would long to see in Ontario, the 35% hard cap that is part of my bill, has been that then people go to pawn shops—not such an onerous reality, certainly better than payday lenders. Much more onerous is the role of the Internet. There, you have a faceless, nameless person who will grant you money at the click of a tab. We want to prevent that from happening because that's still payday lending; it's still usury and it's still available.

I have heard the argument—perhaps the government is going to make it on this section—that this is a more federal purview, but in fact we've had a legal opinion saying that the province can act in this regard, that they don't have to leave it up to the feds, that we do have some jurisdiction and that we can put that as part of the bill. It just adds strength to the bill. It adds what the bill needs, which is true protection for those who are subject to the payday lending scam—so the Internet.

The other thing we would want to look at down the road, of course, for which this opens the door, is those who are quite willing and able and waiting to make payday loans for less than the 60% usurious rate. I should say use “cost of borrowing” because so often, as we've heard in the Money Mart case, they say 59%, but the reality is that it's far, far greater than 59% once the default fees and other fees are placed upon the poor victim. So what we need is a total cost of borrowing that does not exceed 60%. We've had credit unions—Alterna, for one—saying that they could make a profit at 28% and that they are almost ready and willing to move into this zone. But the room is not there for anything like that because of payday lenders, and payday lenders are on every corner.

Some of the excellent research around this bill has been done for ACORN, and it was done in part by Professor Robinson, who was one of the deputants here. It's interesting, talking about the banks' involvement here:

“By funding these ‘shadow banks’”—I'm quoting here from the ACORN report—“Royal Bank of Canada and Toronto-Dominion are enforcing their own brand of economic apartheid and maintaining two separate and very unequal financial systems. This is even more apparent in the investments the banks have made in the largest subprime mortgage lenders in North America.” We've seen the effect of subprime mortgage lending in our neighbours to the south. My daughter and I just came back from Florida and lost track of the number of foreclosures and bank seizures down there. It's a very sad time for real estate in that state and others like it.

“Those second-class customers can be found on the other side of town”—says the report—“hocking their limited possessions, paying triple-digit rates for payday loans, forking over large fees to cash their cheques, and getting tricked into taking out subprime mortgages that may cost them their homes.” There's another ugly fallout of the payday lending industry.



"Of the two banks, Toronto-Dominion is more heavily invested in the predatory economy, owning over a million shares, worth more than \$50 million, in predatory payday lenders and mortgage companies, including 250,000 shares in Money Mart"—they're the ones, of course, that have the class-action lawsuit against them—"the largest payday lender and cheque casher in the country.

"The existence of two separate and very unequal financial systems has become more and more clear in recent years, although the definition of the different systems has changed.

"Previously, the distinction was between those with a bank account and those without—the 'banked' and 'unbanked.' Much attention was focused on the ways that banks shut out lower-income and minority families and on how to bring these 'unbanked' families into the economic mainstream."

I know that my colleague the parliamentary assistant on this mentioned one of those instances—the Cash 'N' Save on Queen Street. I was part of the Parkdale Banking Project, actually, that brought that about. At that point I was in ministry in a church, and I was there with a number of activists—kudos to the Royal Bank for doing that. Of course, one hand giveth and the other hand taketh much, much more away, which I'll get into when we talk about the Royal Bank's holdings in payday lending.

But the good news of Cash 'N' Save was at least that they were a little bit more lenient in terms of the identification, for example, that they would accept. They brought in a whole new form of identification. So there's an example of a company that was doing, at least in part, what they should be doing in low-income neighbourhoods. However—and it's a big "however"—what the people really needed there were micro-loans, and that Cash 'N' Save does not do.

"Much attention was focused on the way that banks shut out lower-income and minority families and how to bring these 'unbanked' families"—as I said—"into the economic mainstream.

"Now, there is growing awareness of the large numbers of 'underbanked' folks—who have a bank account but do much of their business through other types of financial service providers.

"Nowhere is this more evident than in the proliferation of payday loan stores. Payday loans require the customer to have a bank account and to provide a post-dated cheque for the repayment amount. Ten years ago, payday lending was almost unheard of, and even five years ago, payday lending played only a marginal role in the economy. Now it is a \$2-billion-a-year industry.

"—Rentcash Inc., which conducts business under the names the Cash Store, Instalogs and Insta-rent, grew from 25 stores in 2002 to 432 stores in 2006.

"—In 2003, Money Mart made \$248 million in payday loans in Canada. By 2006, this number had more than doubled, to \$554 million."

Imagine if this was extended to the Internet. Imagine leaving a loophole so large that literally a Brink's truck—

it would have to be, to deliver all the profits through it that would happen if the Internet was not covered, or at least attempted to be covered, by any sort of legislation.

We all know, or should know by now, what payday loans are. They're "short-term consumer loans for small amounts. They derive their name from their due date"—and this is one of the horrors of the payday lending industry, and I alluded to this earlier—that you've got two weeks to pay back. Again, we're not dealing with those with huge bank accounts here, who can get much better interest rates or overdraft protection or simply use their credit cards or probably don't need the money in the first place; we're talking about those who are desperate—desperate people who don't earn a great deal, who borrow part of their paycheque and then in two weeks have to pay it back. But, lo and behold, not only can they not pay it back, but in fact what tends to happen is they need another little loan. And so it goes.

As I said before, the rollover protection doesn't offer protection because all it means is that they roll over their business to another outlet. If Internet banking is included, or payday lending is included in this mix, then of course it's endless. Then they cannot only roll over their indebtedness from one corner store to another, but they can roll over their indebtedness to any number of servers, from any numbers of countries, on the Internet.

"In most of Canada, the payday lending industry operates completely unregulated and makes money by blatantly violating the law with every loan they make." That's really quite critical. Interestingly enough, I heard from a number of lawyers at the break time. I'm not a lawyer; I'm just a United Church minister by trade, who was elected by her constituents. They all tried to argue and persuade me that the Criminal Code would still cover those who are beset by payday lenders. Of course, what they failed to say as well is that payday lenders will continue to charge usurious illegal rates until regulations are posed as well.

So, yes, the Criminal Code is still in effect, but illegal usurious rates charged by payday lenders are still in effect as well with Bill 48. Bill 48 does nothing, nothing at all, to stop that. "While the Criminal Code clearly states that annual effective interest rates must not exceed 60% ... [a] customer may have to pay up to \$90 in fees to borrow \$300 for just two weeks."

You can imagine that somebody needing \$300 for two weeks is going to have a very difficult time paying \$390 back in two weeks' time. Of course, they won't; they go into even more debt, which is exactly why the Star did their wonderful series of exposés and talked about what is, in a sense, an up to 1,000% interest rate, which is really charged by payday lenders despite what they say in their brochures or on their signs.

1520

It says, "Payday lenders say their loans are meant to help people in a one-time emergency, but in fact payday loans are set up to sink people deeper in debt and trap them"—and trap them, I repeat—"in extremely expensive loans."



Let's go back to the legal opinion that I received. Of course, we're debating here an amendment to do with the loophole of the Internet. The legal opinion that I received at the last recess was that those who are preyed upon by payday lenders will still have Criminal Code protection. I will check that out tonight from other sources—just what you do around here. What was not addressed was that usurious interest rates will still be charged with the passing of Bill 48. Every day that goes by, even if Bill 48, as it exists, were to get royal assent tomorrow, people are being charged illegal interest rates by every payday lender out there. Essentially what I'm hearing from the good lawyers present is that that's all right because they may still have protection to take those payday lenders to court.

Let's listen to what we're saying here. Those who need a payday loan for \$300 are going to pay back up to \$390 in the next paycheque period in two weeks and, if they can't do it, will roll it over either within that company or another company if Bill 48 passes. Those people, who presumably are ashamed that they had to get in this difficult place, who don't have a lot of money to begin with, who probably don't have a lot of cultural capital, who don't have Internet access, or not a lot of them do, who don't have a lot of legal expertise, actually think that businesses that arise on their corner are legal.

One would assume that: that a business is legal. If the Hells Angels set up on my corner and started dealing cocaine, I would assume that cocaine had been made legal, or I would assume that the police would go and shut them down—two options there. Payday lenders are different. Payday lenders engage in an illegal activity according to the Criminal Code, but presumably we don't have the wherewithal to have the police shut them down. What we have to do is take them to court to prove our case, so those least able to hire a lawyer and take a large company to court are the ones we're asking to enforce the law, the law that was put in place on their behalf. This is equivalent to asking those who walk past the Hells Angels selling crack cocaine on the street corner to take the Hells Angels to court or else they're going to continue to do business. That's exactly the analogy here.

So I don't take a great deal of comfort from the legal opinions that say, "Don't worry about it; they can still take them to court," because taking them to court, quite frankly, isn't a good option for many, and it shouldn't have to be an option. When you're dealing with an illegal industry, it shouldn't have to be an option. What a government should do is enforce the law. What our government should do is enforce the law of the land, which says that anything over 60% is usurious. But instead, at its very best, assuming that the legal counsel I received is absolutely in every sense correct, what we've got is this grey area, this unregulated financial industry that is still unregulated when this bill passes because they're still charging usurious interest rates. In other words, they're still breaking the law. For every day this bill would be in effect, they would still be breaking the law of the land.

So to the people I represent, those who can't be here, who don't have the wherewithal to be here, I'm supposed to say that's good news? I don't think so. I don't think I'm going to go back to those who have been preyed upon by payday lenders and say, "You know what? It's good news. Even if Bill 48 passes, nothing's going to change much in your corner payday-lending experience, but you know what? If you really want to, you can take them to court. After the process of court—they'll have lots more lawyers than you will, and lots more money to drag it on, but maybe at the end of it, maybe at the pot of gold at the end of that rainbow, you might get your interest rate back." Give me a break. This is supposed to be solace to people who are preyed upon by payday lenders? I don't think so.

I think it's absolutely appalling that the banks are invested in them, by the way. I know that people get a little edgy when I start mentioning banks around here; I don't quite know why that is. Certainly the banks are involved. Let me just read out the number of shares that are owned by our supposedly squeaky-clean banks. People really should know this, because I know that people are invested in the banks. People are invested in banks who would never consider investing in payday lenders.

People, for that matter, are invested in mutual funds who don't know that their mutual funds include payday lenders. This is the ideology of this bill. Not only ACORN and stakeholders who were constantly coming in as those seeking redress, but one of my staffers discovered that his father was actually invested in payday loans and didn't even know it. So there you go. I would suggest, as I did in the House, to everyone who's reading this Hansard that they check their own portfolio, if they're lucky enough to have one. They're certainly not the ones going to payday lenders if they have one. Those who have more means, but perhaps still have a conscience, should look at their investment portfolios and find out if they in fact are invested in payday lending.

Those who are shareholders of banks or clients of banks should ask their banks why they're invested in payday lenders. I'm certainly going to do that. I'm a Royal Bank customer. Let's start with my bank: Royal Bank of Canada and affiliates, payday lender, Advance America—28,700 shares, value of those shares \$410,000; CompuCredit—this is what the Royal Bank owns in these payday lenders—18,819 shares, \$749,000 value of those shares. I could go on and on.

The purpose of this amendment, which I know is going to be defeated—by the way, that's why I'm doing this. For those who are reading Hansard who think I just enjoy doing the equivalent of a filibuster here, I don't. There are better things I could do, like have some lunch. The reason I'm doing this is because I know how this place works. We have five Liberals on this committee, two Progressive Conservatives and one me. There's one against seven here on a number of these amendments, and the only way I will get the message out about the problems—

**Mrs. Liz Sandals:** Lisa made the same amendment.



**Ms. Cheri DiNovo:** Yes, certainly Lisa. Forgive me. My sister over here, Lisa MacLeod, did support an amendment. But judging from the Progressive Conservative stance around the bill, I imagine that the meaty ones will get voted down.

So the question is, "Do we go through this motion?" It is a motion because I wish that everyone here were represented democratically and fairly, all of those customers—if you can call them that—those victims of payday lenders were represented as fairly as the payday lenders in this room, but I suspect that's not the case. They need a voice too, and they get more of a voice if I get to speak for 20 minutes over every amendment than they would if I put forward an amendment and have it summarily voted down, which is what tends to happen in these rooms.

Of course, you could prove me wrong when I come to the 35% hard cap amendment, which I certainly hope to hear on from everyone around the table. It is, after all, simply the state of the law of the land of Quebec.

I know that many of our cabinet members are in Quebec right now consulting with them on the environment. Perhaps they should consult with them on their payday lending legislation as well, because in Quebec they have exactly what we would hope for, could only hope for in our dreams to have in Ontario. Maybe, while they're at it, they could consult with other jurisdictions too, because there are many of them, including the Pentagon, by the way, for their military personnel. It's frightening that Dalton McGuinty's Ontario is less progressive than the Pentagon, but there you have it. The Pentagon brings in a 36% cap for their military personnel, whereas ours have no cap whatsoever and will have no cap whatsoever even if Bill 48 passes.

I'm asked during the recess to keep in mind that they plan on doing all this. "Trust us," they say. "Trust us" is something that you hear a lot around here. "Trust us; regulations will take care of what's not in the bill." I do; I absolutely do. I like the Honourable Ted McMeekin. I think he is one of the more trustworthy people around this place. He's a United Church minister, like myself. I have every faith in him.

Forgive me, though, if I don't necessarily have every faith in the payday lending association and other members of cabinet, because we know the way this place works. We know that if something is going to get the light of day legislatively, it's going to have to have the Premier's assent and the cabinet's assent as well, not just Ted's—

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, your time has elapsed.

**Ms. Cheri DiNovo:** Thank you very much.

**The Chair (Mrs. Linda Jeffrey):** Committee, we have a motion on the floor moved by Ms. DiNovo. All those—

**Ms. Cheri DiNovo:** A 20-minute recess.

**The Chair (Mrs. Linda Jeffrey):** A 20-minute recess has been called.

*The committee recessed from 1530 to 1550.*

**The Chair (Mrs. Linda Jeffrey):** Committee, our recess is complete.

We're at the section now where Ms. DiNovo has moved a motion. A recorded vote is necessary after a 20-minute recess.

All those in favour of the motion?

**Ayes**

DiNovo.

**Nays**

Kular, Sandals, Sousa.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

The next motion on the floor is the Conservative motion, which I rule out of order. It has to be read into the record. Mrs. Savoline, would you mind reading that into the record, please? Or you can withdraw it.

**Mrs. Joyce Savoline:** I'll withdraw. I think that's what Ms. MacLeod's motion was going to do.

**The Chair (Mrs. Linda Jeffrey):** Yes. Thank you.

Shall section 2 carry? All those in favour of the section? Yes, Ms. DiNovo.

**Ms. Cheri DiNovo:** If this is a recorded vote, I'll call for another 20-minute recess, please.

**The Chair (Mrs. Linda Jeffrey):** Okay, another 20-minute recess has been called.

*The committee recessed from 1551 to 1611.*

**The Chair (Mrs. Linda Jeffrey):** The motion on the floor is, shall section 2 carry? The 20-minute period of time has passed.

**Ayes**

Kular, Mauro, Mitchell, Sandals, Sousa.

**Nays**

DiNovo, MacLeod, Savoline.

**The Chair (Mrs. Linda Jeffrey):** That's carried.

Sections 3 to 8 have no amendments. Shall sections 3 to 8, inclusive, carry? That's carried.

**Ms. Cheri DiNovo:** Excuse me. I didn't have a chance there. A 20-minute recess, please, before that recorded vote.

**The Chair (Mrs. Linda Jeffrey):** I think I already asked the question, so I'm going to—

**Ms. Cheri DiNovo:** I didn't have a chance even to speak to it, so I challenge the Chair on that.

**The Chair (Mrs. Linda Jeffrey):** You can challenge, but I'm going to rule that I asked the question; I went to it. You'll have other opportunities.

So sections 3 to 8, inclusive, have carried.

We're at section 9. Ms. DiNovo, you have the motion.



**Ms. Cheri DiNovo:** I move that subsection 9(1) of the bill be struck out and the following substituted:

“No right to hearing

“(1) If an applicant for a licence or renewal of a licence does not meet the prescribed requirements or has not provided the prescribed security to the registrar, the registrar shall refuse to issue or renew the licence, as the case may be.”

**The Chair (Mrs. Linda Jeffrey):** Any debate on that issue?

**Ms. Cheri DiNovo:** What this motion allows is that the minister can require a security bond of some sort. We heard a deputant on that, and I was just interested in looking up that deputant. It was the Surety Association of Canada. They’ve worked very closely with the Manitoba government on this.

The purpose of putting up a bond, of course, is that it ensures compliance. If it’s just a fine—by the way, I think the fines are far too light in this bill anyway—and the company doesn’t have the means or drags their heels on paying, then this is a way of getting that money for the client or, again, the victim. That’s why we think this amendment is important.

I also wanted to go back to something I was speaking about before. That was a discussion that I had around the “Trust me” aspect of regulations in a bill that doesn’t have much going on in it, a bill that really just opens the door for regulations but doesn’t provide them, which still keeps victims paying usurious interest rates. The problem with “Trust me”—and I will make this very specific—is that this government has proposed an expert committee. If this government was really acting in good faith and proposed an expert committee, one would hope that the experts who sat on the expert committee would be those recognized in their field.

We were lucky enough in this committee to have two such experts depute before us. One was Bob Whitelaw, and the other was Professor Chris Robinson. I just want to read you his academic qualifications. Chris Robinson is associate professor of finance—

**The Chair (Mrs. Linda Jeffrey):** Can I just ask that there not be so many side conversations. Ms. DiNovo has the floor.

**Ms. Cheri DiNovo:** Chris Robinson, an associate professor of finance at the Atkinson School of Administrative Studies at York University, is a widely published expert on personal finance. He wrote two reports on payday loans for Industry Canada in 2004 and 2005, one report for the Association of Community Organizations for Reform Now, and he appeared in 2007 and 2008 as an independent expert witness for the Manitoba Public Interest Law Centre in the payday loan rate cap hearings, in front of the Manitoba Public Utilities Board. The board adopted his recommendations almost entirely.

So this is the latest Canadian jurisdiction to pass payday loan regulations. One might ask, why wouldn’t this man be acceptable as an expert witness on the expert panel? His recommendations, of course, as he said, were adopted almost entirely by the Manitoba government.

The other person, of course, is Bob Whitelaw, who served as the very first president of the Canadian Payday Loan Association. Mr. Whitelaw had one of those road to Damascus moments—ah, I showed my United Church background—and is now working on the side of light, trying to get micro-loans offered at, whoa, the lowly sum of 28% and is working in the credit union industry to see if that can’t happen. Bob Whitelaw is a recognized expert, a consultant now in the field, a former head of the Canadian Payday Loan Association, yet he still is not considered expert enough for the expert committee.

This is where one has to question one’s trust in this government bringing forward regulations that actually will protect the consumer in a real way, not just asking the industry to get licensing, not just asking the industry to stop rollover loans, but actually asking the industry to make micro-loans to those who need them at a—and again, I almost choke on the words—reasonable interest rate: the 35% interest rate cap that Quebec has, or the 16% and rising interest rate that Manitoba has, or the 36% interest rate cap that is so popular in jurisdictions in the States. One is not asking for the moon here; one is simply asking for an interest rate that anybody who had means would refuse to pay. They can get a credit card for 28%, so why would they go to a payday lender and pay 35%? Instead, we’ve got those who are operating outside the law, illegally, offering an illegal product at between 300% and 1,000% interest. That’s what payday loans are.

What makes me a little nervous is that we have no idea who these experts are who are going to be making the recommendations. The government hasn’t said how they’re choosing them, they haven’t said who they’ve chosen, and they haven’t given any valid reasons as to why the two recognized experts who have deputed before this committee are not considered expert enough, even though they’ve been expert enough for other jurisdictions—the most recent being Manitoba—to adopt almost all of their recommendations. That makes me a little nervous. That makes me not want to trust the regulatory process, where this bill is concerned. That makes me want to keep talking and keep taking recesses. I don’t trust that this government will walk through the door that is all that Bill 48 really is and help the victims of payday lending to go through it, too, to the other side. I think what’s going to happen is that we’re going to get experts sitting on that so-called expert panel who very much side with the payday lending institutions or the banks that are invested in them, and not the consumer.

Nobody from the two consumer groups that we heard deputing here, ACORN and the United Way, has been asked to sit on the expert panel either. These are the pre-eminent consumer advocacy groups who came to depute before us. I should also mention Parkdale Community Legal Services and Workers’ Action Centre—any of those groups who have worked with people on the ground, people who are actually victims of payday lenders. Those are the people we need on this committee. Presumably, one of the experts on the expert committee should be somebody who’s been stung badly by the



payday lenders and who doesn't want to pay between 300% and 1,000% interest, who doesn't want to be preyed upon by an illegal industry.

This is hush-hush, secret. We don't know the committee, we don't know who's going to sit and who's going to make the regulatory calls that are going to be put into regulation and brought forward, presumably, at some point in the fall, and we don't know when it's going to happen. Presumably, Bill 48 could pass and we might never hear from this committee again. We don't know either way. We don't have a timeline here and we don't know the experts.

What makes us—and I'm going to repeat it again—extremely nervous about who these experts are is that none of the experts who are recognized in the field on this issue are even being considered for the so-called expert committee.

I suspect this is going to be a little bit like the poverty consultations that are done behind closed doors, where only those hand-picked and invited by the government are invited, or those who respond to an \$87,000 ad in the newspaper, who actually buy a newspaper and have the wherewithal to respond to it.

1620

That's not what we want here. We don't want that, and if that's what we seem to be getting—and it is what we seem to be getting—then it makes me lack trust, forgive me, in the powers that be to actually do what's needed here under the umbrella of this bill. Hence, we're back to Bill 48 and what's actually printed on the paper, not what's promised—not the pie in the sky, but pie now. The “pie now” of Bill 48 is a dangerous one. It's a kind of empty caloric pie, one that promises to give you some sustenance, and then you eat it and, hey, it's some sort of meringue; it's meringue and no lemon. That's what the pie of Bill 48 is.

What's so sadly missing, too—and missing in this room, missing in these discussions, again, and I come back to them because they're so clearly absent from this process—are the victims of the illegal industry operating in this grey zone of the payday lending. I think I'm going to work with this metaphor again of the Hells Angels selling crack cocaine on the corners. If Hells Angels did set up on your corner and did sell crack cocaine, I really think that most good people in the neighbourhood—despite the fact that they might have a nice clubhouse and the fact that they might not be dressed in leathers, but dressed in suits—might actually call the police, might actually get somebody in there to stop them from doing what they're doing, because it's illegal and because it harms people.

Here we have the crack cocaine of the lending industry, payday lenders, set up on the same corner. They're illegal too; we know that. The Criminal Code has said that usurious rates are anything over 60%. Bill 48 does nothing to change that reality, and yet for some reason the police aren't called; the RCMP aren't at the door. All that those who are their prey can do is challenge them with class action suits, as in the case of Money Mart, or

individual suits, which is highly unlikely, given the lack of means of those who are their victims.

One might ask—and perhaps this is a question really that should be asked of the Attorney General—why they don't crack down on payday lenders, even when Bill 48 is passed. Why do we not have raids of every payday lender across the province of Ontario? Why do we not have raids of every payday lender across Toronto? And why, by the way, if we are really going to be good sleuths, don't we trace the money—always trace the money, as they tell you in crime dramas—back to the banks, in part where some of it comes from?

We don't do that, of course. Why don't we do that? Because these people are the friends of the government. There's no question there. We had a deputant here, Stan Keyes, head of the Canadian Payday Lending Association, who is a former revenue minister and has a huge long list of ministries that he has held for the Liberal Party in Canada. We don't do that because, of course, the banks are involved, and God forbid that we do something in favour of the users of the banks and against the banks themselves. God forbid that we do something to help the victim of the payday lender that might actually hurt the wallet of the banker.

So that's the situation: A blatantly illegal activity is being conducted on the streets of our neighbourhoods. It's blatantly illegal, and I've had assurances from the lawyers around the table that it will still continue to be illegal despite the passing of Bill 48, and yet it's up to the consumers to protect themselves against the crack cocaine of the lending industry. This is outrageous. This is absolutely appalling. It's really amazing—there's a great line from T.S. Eliot, “... the world ends not with a bang but a whimper.” I feel like we're in this room kind of whimpering here, but it's not a whimper for those whose lives are being devastated as we speak. May I remind everyone that Bill 48 won't change that, not one iota. It may make it worse—the jury is out on that—but it certainly will not make it better. Those who need the money—and we're talking about people who need the money. You don't go to a payday lender because you want to buy a new dress; you go to a payday lender because you want to pay the rent, because you want to pay the mortgage, because you want to feed your children, because your paycheque just doesn't stretch. With the high cost of fuel and the high cost of everything else, it just doesn't stretch.

Some of our deputants have made a very large point about how the typical payday lender is just your average middle class person. Folks, I beg to differ, only because I watch what goes on in my own riding. But even if that were so, what a sorry state of affairs. Even if it's a middle class person—and I understand that some do use payday lenders—that shows the egregious state of our economy, that someone's credit rating is so bad that they would have to go to a money lender, a usurer, to get outrageous rates because they couldn't get the money at their own bank or credit union, or, God forbid, out of their credit card, just as cash advances. This is a person in



desperate straits, a person, they tell us, who earns a middle-class salary.

But one can see it, with the cost of gas if you have to drive to work; if you're not covered or your place of employment isn't inspected—as so many aren't; only 1% are—by the employment standards officers; if you're one of the unfortunates, one of the 200,000 who just lost their manufacturing job in the province; if you're a single parent, and certainly even a middle-class salary just doesn't suffice to look after your child or children and the overhead in the city of Toronto, which is such an expensive city. If these are the people who are using it, it doesn't make anything more palatable; it makes it worse.

Should it be enough that they prey on those on ODSP and OW? Absolutely, that should be bad enough to have us act. But the fact that it's creeping up to even the middle class—the middle class are now subject to usurious interest rates on every corner—that's really telling and that's really sad. There's nothing laudable about that.

We know that anybody who knows what they're doing, who has any options, would not go there. They would go somewhere else. They would go to their ATM, they would go to their bank manager, they would go—if need be—to their credit card.

I certainly advise people to watch two wonderful films on the topic, both of which I've had the privilege of watching. One is *Maxed Out*; it's an American film. It's a brilliant film, and it targets the credit card companies.

They are considered usurious down there, but remember, in the States many jurisdictions have already passed legislation against payday lenders, to put a hard cap. So they're targeting the city banks and those that are trying to flog credit cards to university students. We all know they do. We know everybody does that. We know that university students, graduating as they are with an average debt of between \$25,000 and \$30,000 or more, cannot afford a credit card and shouldn't have credit cards.

I know most of our children probably have credit cards. They shouldn't be using credit cards unless they can pay them off every month in total. But they do, and they rack up even more debt.

One of the experts in *Maxed Out* talks about how—she was a university professor called in to consult with the banks and loan organizations that are making these marketing moves—if you just took out the bottom 15% of those who have questionable credit ratings, if you just didn't lend to them or give them a credit card, you would eliminate 50% of your bad debt. A very wise CEO in the crowd says, “And you would also eliminate 50% of our profit.”

They're not stupid. They know where their profit comes from. It comes from churning them and then burning them, which used to be the way it was described in the stock market. They're churning them and burning them at the lower ends of the income echelon, where they cannot afford and shouldn't be allowed to have—and should get some help towards paying their bills from some other source that's not usurious. That's *Maxed Out*.

There were suicides noted in *Maxed Out* of some of those students who got those credit cards—suicides because of huge debt on top of their huge student loan debt, that they just couldn't see beyond.

Another great movie was called the *Debt Trap*, a Canadian film we showed at the Revue. We showed it for free, which I think says something. It was shown there under the auspices of Peggy Nash, our MP in Parkdale-High Park.

We had the filmmaker come. In the final scene of that, the filmmaker cuts up his credit cards and says, “You know, no more. I'm not supporting this system anymore.” Again, there were interviews and interviews with those who were just sinking under a sea of debt, including one wonderful young woman who was getting her doctorate. But guess what? She had exceeded the allowable student loan—this is in Canada, this is not the States. She had \$100,000 worth of student loans. One could ask, how did she ratchet it up so high? Well, she had children. She was a single parent, an African-Canadian single parent who was trying to pull herself up by her bootstraps, as we so often ask people to do.

She had almost finished. She had her dissertation left to write, but they were starting to bug her. They were already starting, the collection calls were already coming in: “When are you going to make your first payment? When are you going to make your first payment?” Is this the society we want to live in? Is this the world we want to create? Is this how we treat each other?

I'm old enough to remember being a kid and having one of my first summer jobs with a woman from the old school. That's when they were out trying to flog credit cards as this new thing—“This will allow you to buy what you can't afford”—and she said, “No way. I remember.” She was old enough to remember; she was on the verge of retirement. She said, “I remember what happened in the 1920s and the 1930s. I remember when credit was extended willy-nilly to hundreds of people. I remember what happened then.”

You know, it's happening right now. It's happening everywhere right now. It's happening on our street corners right now. It's happening illegally, as well as legally, right now. We should be concerned enough about 28% interest rates—which is what some credit card companies are charging—never mind 300% to 1,000% interest rates, which is the de facto cost of borrowing the payday lenders are charging. That's what we should be concerned about.

I appeal to those on the Liberal side. I appeal to backbenchers. I really do. I appeal to everyone. I'm appealing to that still small voice that I know we all have in us that tells us when something is right and when something is wrong, and that tells us that there are people out there suffering right now, and that even if Bill 48 goes through as written—which it will, with maybe a little frilly amendment here or there that doesn't change the nature of the bill; no hard cap, no real regulation—that's another day, another month, another week.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.



**Ms. Cheri DiNovo:** Thank you. I'll continue later.

**The Chair (Mrs. Linda Jeffrey):** The 20 minutes has passed. We're at the point where Ms. DiNovo's motion is on the floor. Any further debate?

**Ms. Cheri DiNovo:** A 20-minute recess.

**The Chair (Mrs. Linda Jeffrey):** A 20-minute recess has been called.

*The committee recessed from 1633 to 1653.*

**The Chair (Mrs. Linda Jeffrey):** Okay, committee, 20 minutes has passed. Ms. DiNovo's motion is on the floor. A recorded vote is required.

### Ayes

DiNovo.

### Nays

MacLeod, Mauro, Mitchell, Sandals, Savoline, Sousa.

**The Chair (Mrs. Linda Jeffrey):** That vote is lost. Shall section 9 carry? All those in favour?

**Ms. Cheri DiNovo:** Sorry, do we have a chance to speak to this motion then, Madam Chair?

**The Chair (Mrs. Linda Jeffrey):** If you'd asked me beforehand, I could have.

**Ms. Cheri DiNovo:** Before what? Before the recorded vote? Surely I can ask you after the recorded vote, which is what I'm doing.

**The Chair (Mrs. Linda Jeffrey):** Do you want to speak to this section? Is that what you're asking for?

**Ms. Cheri DiNovo:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Okay.

**Ms. Cheri DiNovo:** Fulsome debate is what's accorded in the standing orders.

**The Chair (Mrs. Linda Jeffrey):** I'll start again. Is there any debate on section 9?

**Ms. Cheri DiNovo:** Yes, there is.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** Thank you. Just to refresh those who are watching, if they are hidden in the recesses of this building—it's only televised in this building, which I think is part of the problem. I was speaking to Ms. MacLeod during the recess about that. It would be nice to have this as transparent as possible, but that was squashed, as we know, at the very first meeting.

Just to refresh everybody here and everybody who might be in the building watching, what I am doing here is absolutely asserting my rights under the standing orders to speak for up to 20 minutes on amendments and on sections of this bill and then to call a recess before recorded votes, which is also completely within my rights under the standing orders. The reason I'm doing this is not to be vexatious, it's not to irritate; it's to make valid points about a piece of legislation that may have ramifications that are negative and not positive.

It's to make valid points for those who can't be here to make them for themselves: all of those who are victims of payday lending across this province, and there are

thousands of them; those who just can't get to shore from the sea of debt they find themselves swimming in; those who are subjected to usurious interest rates—and that is what is being charged, illegal interest rates—who are told that their only lifeline in this sea of debt, the only thing that will possibly bring them to shore is a lawsuit against an illegal organization.

That in itself should give us cause for pause. That in itself should make us want a bill right out of the gate that actually ceases this practice until something that's legal can be brought in. By "legal," let us again remind ourselves that we're talking about 60% interest rates. That's the definition in the Criminal Code, that anything above 60% is usurious. That's their definition; that's our definition; that is the Criminal Code of Canada. We have across the province payday lenders who are charging, in terms of the total cost of borrowing, way in excess of that amount.

I just want to share with the committee some interesting little evidences, if you want, around payday lending. One is a payday certificate that one of my constituents gave me. I told you about this earlier. This is from an organization called the Cash Store. It says, "Signature loans for those on a fixed income." So you know where they're targeting it: For those on a fixed income.

When I hear "for those on a fixed income," I don't necessarily think of middle-class people with well-paying jobs; I think of seniors, who are targets of payday lenders, I think of those on government cheques of various sorts. So that's who they're targeting it to.

"When you need the cash instantly," it says. Well, one worries about people who "need the cash instantly." I highlighted in one of my earlier deputations that there are many people with mental health and addiction issues in my riding using payday lenders. One wonders what the money is for that is needed instantly—or for that matter the real necessities of life, which makes one pause as well: food, rent, the hydro bill and, if we give them credit and say there are those one or two middle-class persons in the crowd who use a payday lender, even for gas for their car these days.

Here's what it says:

"Dear Neighbour,

"We are pleased to offer you a pre-approved loan. We offer customer satisfaction. You have been pre-approved for \$260," and then it says, "based on a \$520 net income." It doesn't actually give a time span for that. Interestingly enough, that's exactly the amount many people get on a welfare cheque per month. So presumably you could borrow maybe half of your welfare cheque at this place, the Cash Store.

"To take advantage of this extra payday certificate, simply bring in this certificate along with the following to your nearest Cash Store location...

"A government-issued photo identification"—well, just about everybody has one of those;

"One most recent pay stub or confirmation of income"—that could be a welfare cheque, it could be a senior's pension cheque;



“A current bank statement or printout from an ATM;

“Confirmation of home address;

“Blank cheques....

“Don’t delay....

“Need more than we’ve guaranteed you? We can lend up to \$50,000 instantly. Come in and ask about our other cash solutions. No strings. No hassles. No credit checks.”

It’s interesting; this was not handed out in Rosedale or even High Park and it certainly wasn’t handed out on Riverside Drive; it was handed out in low-income high-rise apartments around my riding. So there you go. That’s marketing for payday lenders.

The other exhibit that I’ll share with you is the editorial from the *Toronto Star*, where the editorial, *de facto*, came out and called for a hard cap on payday lenders. This wasn’t yesterday, this was October 29, 2007. It’s taken the government a little while to respond to this—a little while. I remind you that as the clock ticks, from the time the *Toronto Star* came out and called for a capped rate charged by payday lenders—they were very specific. They mentioned Oregon, they mentioned US jurisdictions where they have 36%. They certainly called for something less than 60%. They called for this now, immediately. They mentioned, “After holding public consultation this summer, it is now considering whether it should go further and regulate the industry.” That was last summer, the summer of 2007. So again, it was almost a year ago that this government was talking about this, and finally we get a piece of legislation.

I find it very interesting. It would be an interesting piece of research to find out how many people have taken out how many loans in the time that has transpired since the *Toronto Star* and their own research dictated to this government that it needed to act, until this Bill 48. Again, I remind you that Bill 48 does not contain within it any hard cap, any cost of borrowing whatsoever.

1700

I also remind you again that the expert committee that’s supposedly looking into what that hard cap regulation will be contains none of the expert witnesses who came to depute on behalf of those who are preyed upon by payday lenders. In fact, two of them who have been really recognized as expert witnesses by other jurisdictions and by other bodies, including the founding president of the payday lenders association, have been rejected as not expert enough.

So here we have the *Toronto Star* asking for it. Here’s an article that definitely caught my attention. It’s going way back to over a year ago, April 22, 2007, a year in which many more had been victimized by an illegal industry. I want to say that again: an illegal industry, operating in the grey area of the law on street corners in your town and mine, as illegal as any other Criminal Code offence. Usury is a Criminal Code offence; it’s 60%. They are charging more—*de facto* way more, in some cases—to their clients than that, and they’re operating. No RCMP is kicking in the door, no police are arresting them. Nothing is happening except research into what they’re doing.

Imagine if we were researching into the illegal sale of drugs when it was done openly on our corners. Imagine if we were researching into other Criminal Code offences. I won’t go too far with that analogy because unfortunately, in some instances, we are just researching. But let’s go back to this article by Carol Goar. It says, “Cash-Poor Families Drawn to Payday Loans”—actually, this isn’t the Carol Goar article. I will get to that. This is another article, in this case from the CBC news. Here’s an example that the CBC used, “one woman whose \$500 loan took five years to retire. In the end, the woman paid an additional \$9,500 in interest and other fees.” I wonder how many women like that woman whom the CBC cites on their website have been stung and victimized by this illegal industry in their midst since this article came out.

This is, by the way, not the bought-and-paid-for analysis that was delivered here in a deputation by a so-called polling firm. This is actually StatsCan that gave this piece of information. It says, “Families who had been refused a credit card were more than three times as likely to have had a payday loan than those who had been granted a card, the report said.” So we’re dealing, in part, with those who have been refused other lines of credit, other, more reasonable lines of credit—again, I use that with some emphasis—those that charge 28% or more. They’ve been refused that and instead have been driven to use those that charge 300% or more—the illegal ones.

In fact, very few Canadians use this kind of service. Less than 3% of families have taken such a loan in the three years ending in 2005. That number’s probably gone up, unfortunately. Again, that’s a StatsCan number. So here, we’re not dealing with a lot of people; we’re dealing with a small number of people taking out small amounts of money that they end up paying back over and over and over again.

There were a number of articles at around the same time, because it was around the same time that I brought in my bill, which calls for a 35% cap. I modelled my bill, with the help of the wonderful research staff here, on the Quebec bill. The Quebec bill calls for a 35% cap, and guess what? It’s been passed in Quebec. And guess what? They don’t have payday lenders. So payday lenders admit that they can’t make money at 35%. That’s pretty frightening. We’re talking about an industry that says they can’t make money at 35% interest—I mean, please. One has to ask oneself about the nature of any industry that would come out with a statement like that.

Here’s another example. “When Kim Elliott”—this is, again, from a *Star* editorial—first borrowed \$250 from a payday lender after her partner lost his job, she had no idea that the couple would entangle themselves in an escalating series of loans,” all from payday lenders, “that would ultimately cost them \$20,000 in interest and fees in less than three years.”

Two hundred and fifty dollars; \$20,000. That’s what usury does. That’s what compound interest—the black magic, in this case—and usurious fees does. This is amazing. It’s staggering, it’s ugly and it’s on your street corner operating in a grey zone of the law, actually being



illegal, but nobody will do anything about it, except those who have the gumption to take them to court, and those are few.

It goes on to say that unanticipated expenses, interest and fees can jack up the annualized cost of borrowing to as much as 1,000%.

It's really quite staggering. It concludes, in this one editorial, that, "Queen's Park should now use the powers that Ottawa has conferred to regulate the cost of these loans"—regulate the cost of these loans. "For too long, government has turned a blind eye to abuse and gouging in the industry. Meanwhile, vulnerable citizens are paying an intolerable price."

Oh, when was this? Wednesday, May 2, 2007. Over a year ago, the Toronto Star, in its editorial, was calling for this government to act on this bill, and what did we get? We get Bill 48, which does not include within it a hard cap.

Now: "1,000% Interest 1,000% Wrong." This is Carol Goar's seminal article on this issue. As she says: "Usury, a crime once considered obsolete, has made a comeback.

"Since Canada's chartered banks pulled out of low-income neighbourhoods in the late 1990s, a new industry has sprung up: payday loan companies. These storefront outlets charge borrowing rates as high as 1,000% to clients desperate to avoid eviction, stay ahead of the bill collectors or get through emergencies.

"The two biggest companies, Money Mart and Rentcash, operate 650 outlets. There are hundreds of small firms.

"It is illegal to charge more than 60% interest per annum"—she makes the point, as I have here and others have before me—"but the law is seldom enforced.... A lender can charge the legal maximum, then pile on processing fees, penalties and service charges without violating any statute."

That's how they get away with it. I was wondering why the RCMP wasn't kicking in their doors. This is the grey area of the law.

"Payday lenders aren't subject to the Bank Act." As I said, they're unregulated. "They aren't overseen by the Superintendent of Financial Institutions. They aren't regulated in most provinces (including Ontario). And the media generally ignore them.

"No one really knows how much business they do or how much money they make. A parliamentary research team tried to find out last year and came up with estimates ranging from \$170 million to \$1 billion a year.

"ACORN Canada, an advocacy group that monitors the sector, says the figure is closer to \$2 billion."

This is astounding. And she goes on to say, "Ontario is one of the laggards." I'll give my nod to my Progressive Conservative colleagues in the House. "Conservative MPP Tim Hudak has called for a crackdown, but so far all the government has done is include a provision in the Consumer Protection Act requiring payday lenders to spell out their borrowing costs in writing." It's sort of like asking the Hells Angels to put in the window of their crack dealership the amount that crack is going to cost.

This is Carol Goar. Again, when was this article written? April 22, 2007. Over a year ago, this article was written. Over a year ago, these editorials were put out. The call had gone up from not just the major dailies but also from the advocacy groups, from the United Way, from ACORN, from those who work in the trenches with those who have been victimized. The cry went up and the cry was almost completely unheeded. We have before us—and that is what we are looking at, all those who are listening—this Bill 48, that does not do what they all have called on a bill and the government to do, which is to state a cost of borrowing.

1710

Instead, we have, "Don't worry, trust us"—the famous last words. "We will bring it in regulation. Trust our expert panel." There's no date upon which the expert panel will deliver its expert findings. Those whom we consider experts have been completely negated by this process. They're not considered expert enough.

I'm looking forward to seeing who the experts are going to be. I wouldn't be surprised, and I don't think anybody out there who works in the trenches with those who are victimized by payday lending would be surprised, if we don't have some payday lender as one of them. I would be extremely surprised, in fact I would be gobsmacked, if there was actually somebody victimized by the payday lenders on that panel or even someone who stood up for them: somebody from ACORN; somebody from the United Way; somebody from Workers' Action; somebody from Parkdale Legal or other legal aid clinics that see this problem all too often; somebody from Justice Matters, a group that has been taking payday lenders to court; or Professor Robinson, who's written a number of definitive papers on this topic and has actually seen his recommendations put into legislation in Manitoba; or Bob Whitelaw, who deputed here, the founding president of the Canadian Payday Loan Association. If any of those experts were on that committee, this particular MPP would do a little dance, I honestly would. I and ACORN and any of those people that I've just mentioned would do a little dance. I don't think it's going to happen. They've already been rejected. I suspect that the expert committee will probably have people from the industries that we're trying to prescribe, sort of like having the fox talk about how to build safeguards for the chicken coop. I suspect we'll have some foxes dictating safeguards for the chicken coop on this expert committee. And I wouldn't be at all surprised if they come up with recommendations that are very much in line with what the government wants.

What the government wants and what payday lenders want and what the big banks who are invested in payday lenders want is for them to keep on making record profits. They want them to keep on being a blight in our neighbourhoods, victimizing those who can least afford it—

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, 20 minutes has passed.

Section 9 is on the table. Shall section 9 carry? Recorded vote.



**Ayes**

Kular, MacLeod, Mauro, Mitchell, Sandals, Savoline, Sousa.

**Nays**

DiNovo.

**The Chair (Mrs. Linda Jeffrey):** That's carried. Section 10. Ms. DiNovo, you have the motion.

**Ms. Cheri DiNovo:** This is section 10(1).

I move that subsection 10(1) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"Right to hearing:

"(1) If an applicant for a licence or renewal of a licence meets the prescribed requirements and has provided the prescribed security to the registrar, the applicant is entitled to have the registrar issue or renew the license, as the case may be, unless,"

**The Chair (Mrs. Linda Jeffrey):** Any debate on that motion?

**Ms. Cheri DiNovo:** Yes. Again, this follows on the last amendment that we made in the New Democratic Party of Ontario, which calls for some kind of surety, some kind of guarantee, that those who use payday lenders will actually be protected by the law. We don't see any of that in this particular bill, Bill 48.

In fact, what's surprising about Bill 48 is how it manages to say so much and yet promise so little. It's actually quite a work of art in that regard. It talks about licensing—and it's interesting. If we just look at what licensing is—without any teeth to licensing, licensing is partly a tax grab for the government just to get some money for something and for which the government delivers you a piece of paper which you then frame and put on your wall. That's what licensing is, unless there are teeth associated with licensing. In fact, it can be a cover for those who continue to break the law—in this case, those we call payday lenders, who, again, I remind all of those present, are breaking the Criminal Code law but are not charged, because they're not calling it interest; they're calling it something else.

I'm really having fun with my Hells Angels analogy. The Hells Angels set up shop on your corner. It looks legal. They sell crack but they don't call it crack. No, they call it aspirin, let's say. Because they don't call it crack but they call it aspirin, the drug legislation that renders selling crack cocaine illegal—it's sort of in a grey area, except that nobody actually goes, kicks the door in and then tests the crack to find out what it really is. In the same way, payday lenders operate an illegal, usurious business where they charge up to 1,000% interest—you've just heard a number of writers and the CBC and the Toronto Star and a number of other dailies that have spoken about this—and contravene the Criminal Code, but this government, under the Attorney General, will not kick the door in, the RCMP will not be

at their door, because they don't call it interest; they call it fees, penalties, default payments etc. Please.

It staggers the imagination; it really does. I suppose it would be down the rabbit hole and slightly amusing if it weren't for the fact that lives are being shattered as we speak. I appeal to the still, small voice of the backbenchers, very few of whom are left in the room right now—I appeal to their sense of justice and ethicality for those people in their own ridings who have fallen prey to payday lenders. I am sure that every MPP has had someone come forward, in terms of casework, to their constituency office who'd been a victim or who had worked with victims of payday lenders. I'm sure that we've all heard the words—certainly everybody in this room has heard the words—of those who work in the trenches: the legal aid clinics, the advocacy groups, United Way. United Way is not some radical group. This is the United Way that has come forward and asked for action, some regulatory action, to prevent the spread of payday lending and to protect those whom the spread of payday lending exploits. The United Way, no less, has called for this, as one of its anti-poverty recommendations.

Let's be frank: This is an industry that preys on the poor. It does. StatsCan has said it does. We know it does, despite, again, the paid-for polling work that was done by the Canadian payday lending association itself.

One of the things that I was taught in university—I think in first year, way back when—was that he who pays the piper calls the tune in terms of collecting data, and that one should be highly suspicious of data collected when it's paid for by the people who are implicated by the results of that data. This is not news to anyone. So if there's going to be data collected, it has to be independent. It has to be arm's length. It has to be done—not bought and paid for by the very industry that we're trying to regulate here, but by an arm's-length organization, perhaps like StatsCan. Some of the amendments that will go in, when we get a chance, are exactly for that. We need more reporting on this industry. We don't have hard data on this industry. We don't know how much money they're taking out of our communities and out of people's wallets; we don't have that information. This government's job it is, I believe, to get that information if they're going to bring in legislation like this.

Meanwhile, what do we have? We have other jurisdictions across North America and around the world that do have caps on payday lenders. Everybody in the industrialized world is facing the same scourge. The difference between many other jurisdictions and Ontario is that they're doing something about it. Even New South Wales put a hard cap of 48%. Again, I wonder how many people in this room would even remotely consider paying 48% interest, but at least it's a hard cap. It's something below the usurious rate, the cut-off of 60%.

**1720**

This is what we're asking for; this is all we're asking for. We're simply asking that Bill 48, after a whole year of asking, after more than a year of asking, after more



than a year of study, after more than a year of deputations, of investigation of other jurisdictions acting while ours doesn't—after all of that time, that ours actually does something other than pass a bill with a number on it that asks people to get a licence, prevents rollovers and just sends them to the competition and makes some changes here and there, some of them positive and some of them not so positive. What we need has to do with usurious rates of interest, pure and simple. That's what we're asking for here: to cap usurious rates of interest for those who can least afford to pay them—usurious as defined by the Criminal Code of Canada.

My goodness, you would think that we were asking this government to, I don't know, do something radical about poverty, like raise the minimum wage above the poverty line, like build affordable housing for the 170,000 people who are waiting on the affordable-housing list, or, I don't know, pass a Buy Ontario policy so that we can get some people working again in this province. We're not asking for anything radical. The reason I'm taking every minute I can get with this committee is that they will refuse, and are refusing, to pass any amendment that does what this bill should do, and that is to cap interest rates below the level defined as usury by the criminal code.

So, as someone who wants to stand up for my stakeholders and my residents—not just the wealthy, but all of my residents and all of my stakeholders, not just the payday lending associations and payday lending companies and big banks—as someone who wants to actually do what I was elected to do and stand up for those who can't stand up for themselves, I figure the best shot I have at a 7-to-1 chance—the odds are 7 to 1 here in this room—is to speak and to tell the truth, simply to tell the truth about what is a usurious interest rate by the Criminal Code of Canada, what is being charged by payday lenders in our midst, which is over that, and demand that the government do something about it. That is, either apply the Criminal Code or bring in a bill of its own that does something—that the Criminal Code and the government of Canada downloaded to this jurisdiction—that we haven't done yet, although others have, notably Quebec and Manitoba, others following in Canada.

My best shot here—and it's pretty sad, isn't it?—the best shot that the victims of usury in this province have, has come down to my energy levels at 5:25 tonight, when everybody would rather be enjoying the pleasant weather outside than listen to me. Even me; I have better things to do. I have better things to do than this, but I'm doing what is required of me as a representative of the people of Ontario, and that is to stand up against the payday lenders; to stand up against the banks, if need be, if they're invested in the payday lenders; to stand up for those who are their victims and not let another day or another month, another three months or another six months go by before this government actually does something. That something—there's only one real step it can take at the end of the day—is to cap the interest, the cost of borrowing charges that these companies charge.

That's all this government can do. That's all they should do. That's what they need to do. If they don't do that, certainly in the interim what they need to do is to enforce the Criminal Code.

Instead, what's happening is lawsuits. Instead, what's happening is those who are fighting for those victims are taking the payday lenders to court, and they're winning. They're winning. That should tell us something. Courts, almost unilaterally, are deciding in favour of the victims. Why? Because they're operating outside of the law; that's why. That's why there's a class action suit against the biggest of them all, Money Mart. That's why. We don't want to—or certainly I don't want to; I think the population of Ontario doesn't want to do anything that might jeopardize those lawsuits, doesn't want to do anything that might cast even more of a shadow over the rights of those who are victims. They certainly don't want to drag this on anymore.

They certainly want what was called for over a year ago, which is action, not by an expert panel of people who are in the industry of payday lending, but an expert panel of real experts who are on both sides of this issue, people like Bob Whitelaw, people who have spent their lives looking at lending and institutions that lend and do micro-loans to those who need them. That's what we need—and/or those who work with them.

My goodness, is there only one person who is willing to say what I'm saying? It's quite appalling, actually. It truly is quite appalling. There's only one person in this room who's willing to say what I'm saying. What I have put forward, most Ontarians want. They really do. They want action out of this government, action on poverty, not words, not a fluffy little bill that promises regulation sometime never but doesn't deliver anything today—pie tomorrow, pie in the sky, but never pie today, not for the ones who need the food.

Could we, any of us, really look those people in the eye, those people whose stories I told? Could we really, any one of us around this table, look those people in the eye, really look those people in the eye and say, "You know what? We're acting with Bill 48. We're going to stop the debt that you're amassing. We're going to stop the fact that you spent \$20,000 on a \$250 loan. We're going to stop the \$9,500 on the \$900 loan. We're going to stop that right now because that's wrong and it's illegal"? Would you really?

If you are willing to, I will happily bring you to my riding and introduce you to such a person. I'll also introduce you to the people with mental health issues and addiction issues who have payday loans out. I'll introduce you to them too and the social workers who work with them, some of whom have said to me, when I've said, "We need more stories of people like this"—she said, "Oh, there are hundreds of them. Where do you want me to begin?" Would you, anyone in this room, really be willing to sit down and speak to one of those victims and say, "You know, we're working on it. We've been working on it for over a year and we're getting closer. We're getting to the expert panel. Then, after the



expert panel, we'll get closer. Maybe then we'll get a little bit closer?"

Meanwhile, as their furniture is being taken out of their apartments and put on the streets, as their phones are being turned off, as they're moving in the middle of the night from one apartment to the other, as they're falling victim to yet other payday lenders—Maxed Out talked about suicides. Can you not see that the result of our inaction is actually death? It is; in instances it is. Come on, people; it's actually death in some instances.

When you get so above your head that you don't know where to turn and you are sinking in a sea of debt, do you think that doesn't contribute to depression? Do you think that doesn't contribute to health disorders of various kinds? Watch the movie. Watch the mothers of those kids reading the notes from those kids, and that's at 28%. Here, we're talking about interest rates of 300% and 1,000%. Just because we can't read the suicide notes, just because we don't have the mothers in the room, just because we didn't allow the deputants to talk doesn't mean it's not happening.

Come on; this is usury. There's a reason the Criminal Code ruled on this. There's a reason 60% is the cap for criminal interest rates. The federal government, in their wisdom—God bless them—knows that lives are harmed at over 60%.

1730

**Mrs. Carol Mitchell:** She said she supports the federal government.

**Ms. Cheri DiNovo:** Carol Mitchell just said that I support the Harper government. No, actually you support the Harper government; Dion supports the Harper government. Here's one thing that all the governments have got right. No government has overturned that Criminal Code statute, because they know it's valid. We know it's valid. We know 60% is already too much to charge those who can't afford it.

It's wild. It really is quite appalling and wild. I think of those wonderful writers when they talk about the banality of evil, that evil isn't necessarily Hitler storm troopers. The banality of evil means good people who do nothing when confronted with evil in their midst. It's bureaucrats, civil servants. It's people who sign off on bills like this when people's lives are being harmed. That's evil. What we are talking about in this room is evil. There's no doubt about it. If you doubt it, if you smirk—and there are people smiling at this characterization of what's going on.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, please. It's not that the time is past; I'm asking you to speak to the motion, please.

**Ms. Cheri DiNovo:** Okay, I will.

**The Chair (Mrs. Linda Jeffrey):** You still have time.

**Ms. Cheri DiNovo:** Is it evil to have a Bill 48 that doesn't even have the decency to include within it a chance to actually collect the money owed to the people who are its victims? This is why we're asking for some sort of surety in section 9. This is why we're asking for some sort of action in this entire bill, quite frankly.

But again, to the banality of evil: It really is the banality of evil. If you were only to sit down with a social worker in any of your ridings who has dealt with the consequences of the scourge of payday lending, of usury, you wouldn't smile. You wouldn't smirk. You wouldn't rule me out of order. You would actually act. You would actually do something now, because every day there's another victim or tens or hundreds of victims.

This is what we in the New Democratic Party are asking you for. It's not even really partisan. I hope it's not partisan. I hope it's called human decency. I hope it's called simply obeying the law of the land. I hope it's called simply enforcing the law of the land for the victims, some of them quite innocent, I might add; some of whom are not of right mind and for whom no explanation or education is going to make much difference. They are also harmed.

A group I haven't talked about very much today—

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, I'm sorry. The 20 minutes has passed.

**Ms. Cheri DiNovo:** Thank you. I'll get to seniors next time.

**The Chair (Mrs. Linda Jeffrey):** Ms. MacLeod.

**Ms. Lisa MacLeod:** While my colleague makes some compelling points and tugs at the heart strings from a human interest point of view, I think that at the end of the day my colleagues and I have to understand that there is an aspect of personal responsibility with this legislation. We can't protect people from themselves; we can only set the conditions where we protect the general public. I think we need to understand that while we're debating this piece of legislation. I don't support her logic. I think that if we did, then we would eliminate for the folks that she's talking about any source of credit. So I don't know where the end or the follow-through of that logic is.

We in the official opposition won't be supporting this motion. I can't support that logic. I know that because of the way this is going, we all want to speed along the resolutions so we have an opportunity to vote on them. But at some point what's going on here is that the opposition, and I guess in some cases the government too, are being muzzled through this process, because we feel compelled to allow the process to move along and not comment on whether it's our own resolutions or the resolutions of the government or the third party. I have a real issue with that, and I think we should have fulsome debate. What's occurring now is that we are not having fulsome debate. We are not getting our points on the record because we feel that one party is able to recess for 20 minutes or have discussion for 20 minutes so that we can get through these resolutions in the time allotted. We would like to have our say, in the official opposition, on ways we believe we could improve the bill. To sit here and say that there are seven against one or five against three—at the end of the day, I think we can compromise on this initiative. We have to remember why we're here. The federal government has told us, as legislators, we must do this, province by province right across this country.



We have to make a decision in this committee room today on certain amendments that we think can improve the bill. We believe that we need to do something on Internet payday loans. We also believe we must do something with credit unions. Unfortunately, the government didn't see fit to include that, but that's their choice.

Later on, we'd like to see some fiscal literacy initiatives, so that the issues that are being dealt with by my colleague in the third party won't happen, so that people won't be spiralling downward with that circle of debt. I would urge her to consider—I know it's fun and this is a game that some of us might like to play from time to time, but it's in the interests of actually having a productive and fulsome debate to have all three political parties in this chamber, including the official opposition and the government, participate in debate. The spirit of fulsome debate is not what's happening right here. I just wanted to add that. I wanted to be on the record. I'm not sure if my colleague from Burlington has the same comments or if members of the government do, but I think in the interests of making this bill better, we should each be able to participate without feeling handcuffed through the time constraints we have.

**The Chair (Mrs. Linda Jeffrey):** Is the committee ready to vote on this motion?

**Ms. Cheri DiNovo:** I would ask that we recess for 20 minutes, please.

**The Chair (Mrs. Linda Jeffrey):** A recess has been requested.

*The committee recessed from 1737 to 1757.*

**The Chair (Mrs. Linda Jeffrey):** Committee, 20 minutes has passed. We have Ms. DiNovo's motion on the floor. All those in favour of the motion?

**Ayes**

DiNovo.

**Nays**

Kular, MacLeod, Mauro, Mitchell, Sandals, Savoline, Sousa.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

Committee, we don't have enough time to deal with any further business today. We will be reconvening on Wednesday at 4 o'clock. We're adjourned.

*The committee adjourned at 1757.*















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# Official Report of Debates (Hansard)

Wednesday 4 June 2008

# Journal des débats (Hansard)

Mercredi 4 juin 2008

## Standing Committee on General Government

Payday Loans Act, 2008

## Comité permanent des affaires gouvernementales

Loi de 2008 concernant  
les prêts sur salaire

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 4 June 2008

Mercredi 4 juin 2008

*The committee met at 1605 in committee room 1.*PAYDAY LOANS ACT, 2008  
LOI DE 2008 CONCERNANT  
LES PRÊTS SUR SALAIRE

Consideration of Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts / Projet de loi 48, Loi visant à réglementer les prêts sur salaire et à apporter des modifications corrélatives à d'autres lois.

**The Chair (Mrs. Linda Jeffrey):** This is the Standing Committee on General Government. We're here to continue clause-by-clause consideration of Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts.

As you'll recall, committee, we were at section 10 and we're here, at this point, to consider it. Is there any further debate on section 10? Seeing none, all in favour? All opposed? That's carried.

**Ms. Cheri DiNovo:** Sorry, we're voting on section 10?

**The Chair (Mrs. Linda Jeffrey):** Section 10.

**Ms. Cheri DiNovo:** The whole section?

**The Chair (Mrs. Linda Jeffrey):** Yes, the whole section.

Sections 11 through 25 have no amendments at all. Is there any debate on those sections? Seeing none, all those in favour of those sections? All those opposed? That's carried.

Section 26: Ms. DiNovo, you have the amendment.

**Ms. Cheri DiNovo:** I move that section 26 of the bill be amended by adding the following subsections:

"Cost of borrowing

"(3) A lender under a payday loan agreement shall ensure that every advertisement, circular, pamphlet or material published by any means relating to the agreement sets out the cost of borrowing under the agreement, expressed in terms of the annual percentage rate.

"Duty of loan broker

"(4) No loan broker shall facilitate a contravention of subsection (3)."

In other words, transparency and accountability.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, we'll be fine this time, but just for the future, so we have accuracy, can you say the number before the statement?

**Ms. Cheri DiNovo:** Sure.

**The Chair (Mrs. Linda Jeffrey):** Any further discussion on this motion? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 26 carry? All those in favour? All those opposed? That's carried.

Section 27, government motion. Mr. Sousa.

**Mr. Charles Sousa:** I move that subsection 27(2) of the bill be amended by striking out "false or deceptive information" and substituting "false, misleading or deceptive information."

**The Chair (Mrs. Linda Jeffrey):** Any debate on that?

**Mr. Charles Sousa:** We support this. Elsewhere in the bill where false or deceptive materials or statements are referred to, they are described as "false, misleading or deceptive," so subsection 27(2) is amended to add the missing word "deceptive" in order to be consistent. It's just a matter of maintaining consistency in the bill.

**The Chair (Mrs. Linda Jeffrey):** Any further discussion?

**Ms. Cheri DiNovo:** First of all, I wanted to give some explanation to the committee. I've decided, along with my colleagues in the New Democratic Party and my stakeholders who are myriad and stand up for victims' rights, that I will not be filibustering. This is why: I had a conversation with the Honourable Mr. McMeekin and was given a number of assurances by him. I was first of all given an assurance that by the time the House sits again in October, we will have regulations in place in this bill. I've also been given assurances that he hopes—and this is not only him, but also his parliamentary assistant—to do better than what has been brought forward in Manitoba. I've also received assurances from those legal experts who are currently involved on victims' behalf in the court system that the bill, as it's written, once passed, will not deter lawsuits against payday lenders under the Criminal Code until the regulations come into play. That gives me some assurance. Certainly, I've also been given assurance by Mr. McMeekin that there will be consumer advocates who sit on the expert committee. I just want to make sure that that goes in the record, just so we all know what assurances have been given. I'm quite happy, therefore, to continue to debate this bill.

Subsequent to this particular government motion amendment, I'm certainly going to support it.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, shall the motion carry? All those in favour? All those opposed? That's carried.



Shall section 27, as amended, carry? All those in favour? All those opposed? That's carried.

Section 28, Ms. MacLeod.

**Ms. Lisa MacLeod:** I move that subsection 28(1) of the bill be struck out.

The rationale: As you'll recall, Chris Robinson, during his deputation to the committee, suggested that 28(1) prevents loan brokers from charging a broker fee but suggested that this rule is not necessary and simply makes the operation of a loan broker inefficient. Legislation and regulation that captures the loan broker's fee as part of the maximum fees allowed is sufficient to protect consumers, according to him. I thought the rationale was well explained and put it forward here today.

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**The Chair (Mrs. Linda Jeffrey):** Any further debate on that issue? Mr. Sousa, did you want to speak?

**Mr. Charles Sousa:** Striking out subsection 28.1 of the bill would result in less consumer protection, in our opinion. It is not unusual for loan brokers to provide an advance to the borrower and immediately demand their brokerage fee from the borrower.

The arrangement between the loan broker and the lender is a business-to-business matter. Allowing it to impact the borrower may provide potential loopholes to licensees. So brokers and lenders can exchange fees, but we don't want it passed on to the consumer directly, so we won't be supporting it as such.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** Yes, we unfortunately will not be supporting this either. We think that a middleman is not necessary. It just adds another layer of confusion and another cost to the marginalized victim.

**The Chair (Mrs. Linda Jeffrey):** Further debate? Seeing none, shall the motion carry? All those in favour? All those opposed? That's lost.

Ms. MacLeod, you have the next motion.

**Ms. Lisa MacLeod:** I'll withdraw this, Madam Speaker.

**The Chair (Mrs. Linda Jeffrey):** Okay, thank you.

Shall section 28 carry? All those in favour? All those opposed? That's carried.

Section 29, Ms. DiNovo.

**Ms. Cheri DiNovo:** This is number 12, for subsection 29(1).

I move that subsection 29(1) of the bill be struck out and the following substituted:

"Requirements for agreements

"(1) A lender under a payday loan agreement shall ensure that the agreement is in writing, the term of the agreement is at least 62 days and the agreement meets the prescribed requirements, if any, and shall deliver a copy of the agreement to the borrower no later than upon entering into the agreement."

**The Chair (Mrs. Linda Jeffrey):** Any discussion?

**Mr. Charles Sousa:** Yes, we won't be supporting it. Consumer protection statutes generally do not regulate the substantive terms of a contract. At this point, the principle of the freedom to contract is honoured. By

establishing it, we're concerned about having just one term, because 62 days then is the maximum allowable for a payday loan.

**The Chair (Mrs. Linda Jeffrey):** Further debate?

**Ms. Cheri DiNovo:** We're hoping for the minimum of 62 days, the reason being that the two-week cycle that normally is a practice of payday lending just keeps people on the treadmill of debt. So that's the reason for giving an extended cycle, just for the record.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, shall the motion carry? All those in favour? All those opposed? That's lost.

Shall section 29 carry? All those in favour? All those opposed? That's carried.

Sections 30 and 31 have no amendments. Shall they carry? All in favour? All opposed? That's carried.

Section 32, Ms. DiNovo.

**Ms. Cheri DiNovo:** Yes, number 13, subsection 32(2).

I move that subsection 32(2) of the bill be struck out and the following substituted:

"Duty of lender

"... The lender under a payday loan agreement—

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, can you read the numbers before—

**Ms. Cheri DiNovo:** Sure.

"Duty of lender

"(2) The lender under a payday loan agreement shall ensure that the annual percentage rate under the agreement does not exceed,

"(a) 25 per cent if, at the time of entering into the agreement,

"(i) the borrower is receiving assistance under the Ontario Disability Support Program Act, 1997, or the Ontario Works Act, 1997, or

"(ii) the advance exceeds 30 per cent of the last payment of salary received by the borrower, net of the following deductions:

"A. Income tax.

"B. Canada pension plan.

"C. Employment insurance.

"D. Union dues.

"E. All other deductions that are prescribed; or

"(b) 35 per cent in all ... cases."

**The Chair (Mrs. Linda Jeffrey):** Any discussion?

**Ms. Cheri DiNovo:** Yes, again, this is the hard cap that we've been asking for in the New Democratic Party, and certainly our stakeholders have been asking for. It also speaks to those who are on government cheques and the necessity for those on government cheques to be given a reasonable rate of interest—even 25% is pretty generous—so that they don't get into this treadmill of debt.

So, that is why this provision—and 35% as a hard cap generally we feel is more than adequate for reasonable profit and certainly more than most credit card companies would charge. Of course, also it's in keeping with my own bill, which calls for a 35% cap.



**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, just for clarity, could you read the last words under (b) again—you missed one word—so that we have it clear in Hansard?

**Ms. Cheri DiNovo:** This is for the motion?

**The Chair (Mrs. Linda Jeffrey):** Yes.

**Ms. Cheri DiNovo:** “(b) 35 per cent in all other cases.”

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Sousa.

**Mr. Charles Sousa:** I do appreciate the concerns being put forward by the member opposite. We appreciate the concerns that have been raised over the last couple of days and certainly throughout the number of months that we’ve had these discussions.

The maximum total-cost-of-borrowing advisory board has been established—or will be established—in order to recommend to the minister an appropriate upper limit of what the total cost of borrowing should be for a payday loan agreement in Ontario. This recommendation would then be considered through setting of that limit in the regulation. There is an option through the bill that enables us to then establish different rates for different forms of cheques, and we did look and consider some of those instruments for those most vulnerable. But at this point, we wouldn’t be making the amendment because of the impact that it would then have on our bill before it goes to the panel.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, shall the motion carry? All those in favour? All those opposed? That’s lost.

Shall section 32 carry? All those in favour? All those opposed? That’s carried.

Section 33, Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that subsection 33(1) of the bill be struck out and the following substituted:

“No default charges

“(1) A lender shall not impose default charges against a borrower under a payday loan agreement and the borrower is not liable to pay default charges under a payday loan agreement.”

Just to make mention here, Manitoba has a pure cap of \$20 for default charges, just to give it some context.

**The Chair (Mrs. Linda Jeffrey):** Any further debate on this issue?

**Mr. Charles Sousa:** I read this one with interest as well. The default charges that can be imposed on a borrower have already been considerably restricted. Only reasonable charges in respect of the legal costs of collection and reasonable charges in respect of a dishonoured cheque are permitted. If the charges imposed are not reasonable, the lender may be prosecuted as is defined.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, all those in favour of the motion? All of those opposed? That’s lost.

Shall section 33 carry? All those in favour? All those opposed? That’s carried.

Section 34 has no amendments. Shall it carry? All those in favour? All those opposed? That’s carried.

Section 35, Mr. Sousa.

**Mr. Charles Sousa:** I move that subsection 35(1) of the bill be struck out and the following substituted:

“No concurrent or replacement payday loan agreements

“(1) The lender under a payday loan agreement shall not enter into a new payday loan agreement with the borrower before,

“(a) at least seven days have passed since the borrower has paid the full outstanding balance under the first agreement; or

“(b) the borrower has provided to the lender proof that the borrower has paid the full outstanding balance under the first agreement.”

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** We will not be supporting this. We definitely support the seven-day cooling-off period. We feel that this is a total nod to the payday lending industry itself at the expense of the victims of payday lending. So again, we need a cooling-off period for those, and simply proof that you’ve paid off a loan shouldn’t make it accessible to you again within seven days.

**The Chair (Mrs. Linda Jeffrey):** Ms. MacLeod.

**Ms. Lisa MacLeod:** The official opposition will also not be supporting this amendment. We echo the same concerns as the New Democrats. I think that the seven-day cooling-off period was probably more structured towards supporting consumer protection than this amendment. So we will not be supporting this amendment.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Mr. Sousa.

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**Mr. Charles Sousa:** We’re trying to ensure that borrowers and those in need have access to credit at their discretion. Borrowers who have demonstrated financial responsibility should not be denied access to credit, is our thinking. Therefore, subsection 35(1) now allows a lender to provide another payday loan in less than seven days if the borrower provides the lender with proof that full payment has been made under the first agreement. What constitutes sufficient proof will be dealt with in regulation.

As noted, we do not want to prohibit access to credit and we are not allowing back-to-back or rollovers. We’re still trying to ensure that those who in fact may have paid off their loans earlier than the prescribed time wouldn’t then be penalized from accessing credit on the next payday.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

The next government motion, Mr. Sousa.

**Mr. Charles Sousa:** I move that subsection 35(3) of the bill be struck out and the following substituted:

“Same loan broker, different lenders

“(3) No loan broker shall facilitate the making of more than one payday loan agreement between the same borrower and different lenders unless,



“(a) at least seven days have passed since the borrower has paid the full outstanding balance under the first agreement; or

“(b) the borrower has provided to the loan broker proof that the borrower has paid the full outstanding balance under the first agreement.”

**The Chair (Mrs. Linda Jeffrey):** Any debate?

**Ms. Cheri DiNovo:** Again, we believe that victims of payday lenders need cooling-off periods—substantially a continuation of the other motion that we just voted down. So we will not be supporting this.

**The Chair (Mrs. Linda Jeffrey):** Further debate? Seeing none, all those in favour of the motion? All those opposed? That’s carried

Shall section 35, as amended, carry? All those in favour? All those opposed? That’s carried.

Sections 36 through 43 have no amendments. Shall they carry? All in favour? All those opposed? That’s carried.

A government motion, Mr. Sousa.

**Mr. Charles Sousa:** I move that section 44 of the bill be amended by adding the following subsection:

“Non-licensed lender

“(4) Subsections (1), (2) and (3) apply, with necessary modifications, to the case where a lender who is not licensed enters into a payday loan agreement with a borrower and receives a payment from the borrower to which the lender is not entitled under subsection 6(3) and that the borrower is not liable to make under that subsection, as if the lender were a licensee mentioned in subsection (1).”

**The Chair (Mrs. Linda Jeffrey):** Any debate?

**Ms. Cheri DiNovo:** This motion is somewhat blackly humorous since we already have an illegal activity going on and the government’s not regulating them. So now we’re saying, “There’s something even more illegal. We’ll go after them.” I find it difficult to really comprehend that the government’s going to enforce this if they don’t enforce the Criminal Code. We’re going to support it, but, again, I have my doubts.

**The Chair (Mrs. Linda Jeffrey):** Any further debate?

**Mr. Charles Sousa:** Again, we just wanted to ensure that some people in business shouldn’t be in business. When an unlicensed lender provides a payday loan to a borrower, the borrower does not have to pay the cost of borrowing. This new subsection empowers the borrower to demand a refund of the cost of borrowing paid to an unlicensed lender. That’s the reason we’re putting it forward.

**The Chair (Mrs. Linda Jeffrey):** Ms. MacLeod, did you want to speak?

**Ms. Lisa MacLeod:** Yes. The official opposition will be supporting this amendment. I think the big issue is—obviously we know that there is a niche market in payday loans and that we do have fringe payday loan companies that are not part of some of the more reputable firms. So I think this is a necessary amendment and we will be supporting it.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Shall section 44, as amended, carry? All those in favour? All those opposed? That’s carried.

Committee, there are no amendments to sections 45 through 65. Shall they carry? All in favour? All opposed? That’s carried.

A new section, Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that the bill be amended by adding the following section:

“Registrar’s annual report

“65.1(1) Within 60 days after the end of each calendar year that ends after parts II and V come into force, the registrar shall prepare a report setting out,

“(a) the number of licenses that the registrar has issued to lenders and loan brokers by the end of the year, whether or not on the direction of the tribunal;

“(b) the number of licenses that the registrar has issued to lenders and loan brokers by the end of the year on the direction of the tribunal;

“(c) the number of licences, during the year, that the registrar has suspended or revoked or on which the registrar has imposed conditions, showing a breakdown of the number of suspensions, revocations and licences on which the registrar imposed conditions;

“(d) the number of licences that the registrar has cancelled during the year under section 16;

“(e) the number of complaints that the registrar has received during the year under section 46 and the nature of the complaints without revealing any personal information as defined in the Freedom of Information and Protection of Privacy Act; and

“(f) the number of orders that the registrar has made under section 53.”

This is about a reporting requirement. It’s about transparency.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, you have another page.

**Ms. Cheri DiNovo:** Oh, sorry. Thank you, Madam Chair.

“Submission to minister

“(2) The registrar shall submit the report to the minister promptly after the expiration of the time period mentioned in subsection (1) for preparing the report.

“Tabling

“(3) The minister shall,

“(a) submit the report to the Lieutenant Governor in Council;

“(b) lay the report before the assembly if it is in session; and

“(c) deposit the report with the Clerk of the assembly if the assembly is not in session.”

Again, as I said, it’s about transparency and reporting requirements.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Ms. MacLeod?

**Ms. Lisa MacLeod:** The official opposition won’t be supporting this New Democrat motion because we believe there needs to be transparency and accountability



in the entire process. We support their efforts in bringing this forward. I have two resolutions later on which also deal with accountability and transparency, which I hope the government and my colleague in the NDP will support.

**The Chair (Mrs. Linda Jeffrey):** Any further discussion?

**Mr. Charles Sousa:** We won't be supporting it the way it's read. Subsection 63(3) of the bill requires the registrar to make available to the public the names of licensees and other information about licences that is required by regulation. All of the information set out in clauses (a), (b), (c), (d) and (f) can be made available to the public by way of subsection 63(3).

Complaints about the licensees can be made public by way of regulation under the Consumer Protection Act, 2002, and this information would appear on the "consumer beware" list which is available on the ministry's website. So this is seen as much more broad and some of the amendments are seen as limiting disclosure. The regulation would then be more comprehensive.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, shall section 65.1 carry? All those in favour? All those opposed? That's lost.

Section 66 has no amendments to it. Shall section 66 carry? All those in favour? All those opposed? That's carried.

Section 67, Ms. MacLeod.

**Ms. Lisa MacLeod:** I move that clause 67(a) of the bill be struck out and the following substituted:

"(a) to promote the education of persons respecting the rights and obligations of persons and entities under this act and respecting financial planning, where the education is done through the use of publications, training, a high school fiscal literacy awareness campaign, advertising and similar initiatives, including by making grants and transfer payments; and"

It goes on from there. It's not very different from what is already prescribed there but, Madam Chair, as you're aware, and as my colleagues are aware, one of my major concerns with this legislation is fiscal literacy throughout the province of Ontario regardless of income. I think we need to start earlier with kids in our high schools. I thought this was probably the easiest way to put this forward so it didn't really interrupt the integrity of the bill. As many of you recall, this issue came up time and again through deputants. I'd urge my colleagues to support what I think is a minor amendment, but I do think it is what is required in this legislation.

**The Chair (Mrs. Linda Jeffrey):** Any further debate?

**Ms. Cheri DiNovo:** Unfortunately, the New Democratic Party and myself will not be supporting this amendment, but we do think that the funds that are set up in this education fund should go to those who are dealing on the ground with the consumer, not to the payday lending association or any offshoot of them or the banking industry. We think it should go to a group like ACORN or the United Way, who have the ability to administer the fund and deliver the education. Unfortun-

ately, we don't think it should go to the educational system per se. They have their own funding and their own money to deal with this. This shouldn't come out of the pockets of the consumer.

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**The Chair (Mrs. Linda Jeffrey):** Further debate?

**Mr. Charles Sousa:** I read with interest—and we've had these discussions prior, during debates, in respect to the education, but we do want to maintain some flexibility and allow that creativity. To leave it to the education board may be problematic. The corporation will, in accordance with the provisions of the bill, promote education and financial planning on a broad basis, hopefully in an effective manner. What we don't want to do is tie their hands. The corporation, through its volunteers, would then make these applications and try to lever some of this with their organizations.

I agree that the funds should not be redirected to payday lenders. This is meant to be strictly within the corporation and for the benefit of the consumers within the community. I would hesitate to mix it with the education at this point because of the dilemma and the degree of complexity it would undertake at this point.

**The Chair (Mrs. Linda Jeffrey):** Further debate? Seeing none, shall the motion carry? All those in favour? All those opposed? That's lost.

Shall section 67 carry? All those in favour? All those opposed? That's carried.

Section 68 has no amendments. Shall it carry? All those in favour? All those opposed? That's carried.

Section 69.

**Ms. Lisa MacLeod:** I move that subsections 69(2) and (3) of the bill be struck out and the following substituted:

"Hearing required

"(2) The minister shall hold a hearing or afford the corporation an opportunity for a hearing before making a regulation under subsection (1)."

This is about transparency and accountability. I think that public disclosure is important.

**The Chair (Mrs. Linda Jeffrey):** Further debate?

**Ms. Cheri DiNovo:** We'll be supporting this motion in the New Democratic Party, and I will be supporting it. Again, it's about transparency and accountability. We think, first and foremost, it should be to the public, not to the payday lending association.

**Mr. Charles Sousa:** We won't be supporting this. The corporation makes an annual report and has to give the minister any other information and reports he requires. The minister, we feel, must be free to take necessary action in respect of an entity entrusted with the monies of the education fund. The minister is not prohibited from holding a hearing, mind you, if he feels that it is advisable to do so. That is, if something does go wrong, we would like the ability to act quickly, and, as I said, the discretion is there to hold a hearing and it is meant to be public.

**The Chair (Mrs. Linda Jeffrey):** Further debate? Seeing none, all those in favour of the motion? All those opposed? That's lost.



Shall section 69 carry? All those in favour? All those opposed? That's carried.

Sections 70 through 73 have no motions. Shall they carry? All those opposed? Carried.

We're at section 74.

**Ms. Lisa MacLeod:** I move that subsection 74(4) be struck out.

I remember a certain Auditor General's report that went leaking into the press last year, and I think we need safeguards so that the minister can move forward and that we can highlight where things go wrong.

**Ms. Cheri DiNovo:** We will be supporting this. This would prevent the corporation from giving the minister the report before it is tabled with the Legislature. Again, it's about transparency and the public's right to know before the minister, the bureaucrats or the payday lending association.

**The Chair (Mrs. Linda Jeffrey):** Mr. Sousa.

**Mr. Charles Sousa:** Thank you. We agree it's a good idea. We'll be supporting it as well.

**Ms. Lisa MacLeod:** Woo-hoo!

**Ms. Cheri DiNovo:** Hallelujah!

**Ms. Lisa MacLeod:** Did you catch that in Hansard?

**Mr. Charles Sousa:** The corporation should not give a copy of its annual report to any person before the minister receives the report and either submits it to the Lieutenant Governor in Council or lays it before the assembly.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, shall the motion carry? That's unanimous; that's great. That carries.

Shall section 74, as amended, carry? All those in favour? All those opposed? That's carried.

*Interjections.*

**The Chair (Mrs. Linda Jeffrey):** Committee, I know you're having a good time, but we have a little bit of business left.

Sections 75 and 76 have no amendments. Shall they carry? All in favour? All opposed? Those are carried.

Section 77.

**Mr. Charles Sousa:** I move that the English version of paragraph 19 of section 77 of the bill be amended by striking out "making" and substituting "entering into."

This is a technical amendment. The language of the bill is that payday loans are made and payday loan agreements are entered into. We just need to be consistent on this point.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Sousa.

**Mr. Charles Sousa:** I move that paragraph 20 of section 77 of the bill be amended by striking out "described in paragraph 19" and substituting "that contravenes the regulations made under paragraph 19".

Again, it's a technical amendment. Paragraph 19 prohibits certain types of payday loan agreements and paragraph 20 is a related regulation-making power that deals with rights, obligations and remedies. This related

regulation power now deals only with payday loan agreements that do not comply with paragraph 19.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Sousa.

**Mr. Charles Sousa:** I move that section 77 of the bill be amended by adding the following paragraph:

"23.1 specifying what constitutes sufficient proof for the purposes of clauses 35(1)(b) and 35(3)(b) or authorizing the registrar to specify what constitutes sufficient proof for the purposes of those clauses in the circumstances that the registrar specifies with respect to the particular borrower involved;"

The new regulation-making powers related to section 35 of the bill allow another loan to be made in less than the seven days if the lender or loan broker is provided with proof that full payment was made under the first payday loan agreement. We support this because the power allows for the specification of what will and will not be sufficient proof of payment of the first agreement.

It's a technical amendment and what we're trying to do is determine what does constitute sufficient proof.

**The Chair (Mrs. Linda Jeffrey):** Further debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that section 77 of the bill be amended by adding the following paragraph:

"26.1 specifying the languages in which a licensee is required to use in,

"i. any advertisement, circular, pamphlet or material published by any means relating to a payday loan made by the licensee or payday agreement entered into by the licensee, or

"ii. providing information or statements that the licensee is required under this act to provide a borrower;"

This allows the minister to determine the languages of payday loan advertisements. In some areas, as we all know, English and French are second or third languages. Payday lenders should have to provide information suited to languages that are actually spoken in their area.

**The Chair (Mrs. Linda Jeffrey):** Further debate?

**Mr. Charles Sousa:** I appreciate the intent and I'm hoping that, through the education fund and other services that are being provided, multiple languages will be used. It's certainly good, competitive practice for the respective lenders to do so and it should be at their disposal, as well as the education program. However, we don't support it because there are only two official languages in Canada and we cannot make an exception to this specific industry.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 77, as amended, carry? All those in favour? All those opposed? That's carried.



Sections 78 through 80, inclusive, have no amendments. Shall they carry? All in favour? All opposed? That's carried.

Section 81, Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that section 81 of the bill be struck out and the following substituted:

"Commencement

"81. This act comes into force on the 60th day after the day it receives royal assent."

Basically, this forces the government to act faster on the expert panel and regulations. So we're giving them two months.

**Ms. Lisa MacLeod:** I concur with my colleague from the third party. I think in an instance like this, we actually need a predictable date that we can not only let the pay-day lender companies know about, but also that consumers know when to expect this to come into force. I think that's the most respectful thing to do. So I will be supporting this resolution, as will the official opposition.

1640

**The Chair (Mrs. Linda Jeffrey):** Any further debate?

**Mr. Charles Sousa:** The bill cannot come into effect until the regulations are drafted, and that has to take a bit more time. There's a substantial body of regulations to be drafted. We also want to get the recommendations from the expert panel that need to be completed. While we would like to expedite matters as quickly as possible, we want to make certain that we do it right, and it may take a bit longer than the 60 days.

**The Chair (Mrs. Linda Jeffrey):** Further debate? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 81 carry? All those in favour? All those opposed? Carried.

Shall section 82 carry? All those in favour? All those opposed? Carried.

Shall the title of the bill carry? All those in favour? Carried.

Shall Bill 48, as amended, carry? All those in favour? All those opposed? Carried.

Shall I report the bill, as amended, to the House? All those in favour? All those opposed? Carried.

#### SUBCOMMITTEE REPORT

**The Chair (Mrs. Linda Jeffrey):** Thank you, committee. Please don't run away. Because you've been so good, I'm going to let you have a look at the report of the subcommittee which met this afternoon. I apologize for having to pass that responsibility on to another member to resolve for me. I appreciate it. I was tied up. The report of the subcommittee is here for your perusal.

If you wouldn't mind reading it into the record, that would be very helpful. Ms. Mitchell.

**Mrs. Carol Mitchell:** Your subcommittee met on Wednesday, June 4, 2008, to consider the method of

proceeding on Bill 69, An Act to protect children from second-hand tobacco smoke in motor vehicles by amending the Smoke-Free Ontario Act, and recommends the following:

1. That the committee meet in Toronto on Monday, June 9, 2008, for the purpose of holding public hearings.

2. That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel and the Legislative Assembly website.

3. That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 4 p.m. on Friday, June 6, 2008.

4. That groups and individuals be offered 15 minutes for their presentation. This time is to include questions from the committee. To be scheduled on a first come, first served basis.

5. That teleconferencing be made available to those individuals who cannot present in person.

6. That the research officer provide the committee with a summary of presentations prior to the commencement of clause-by-clause.

7. That the Minister of Health Promotion be invited to appear before the committee to make a presentation of up to 15 minutes, followed by 5 minutes for each caucus to make a statement or ask questions.

8. That the deadline for written submissions be 12 noon on Wednesday, June 11, 2008.

9. That for administrative purposes, proposed amendments be filed with the committee clerk by 5 p.m. on Tuesday, June 10, 2008.

10. That the committee meet for the purpose of clause-by-clause consideration of the bill on Wednesday, June 11, 2008.

11. That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair (Mrs. Linda Jeffrey):** Any debate? Any questions? Seeing none, all those in favour of the subcommittee report? Opposed? Carried.

**Mr. Bill Mauro:** May I ask a question?

**The Chair (Mrs. Linda Jeffrey):** Yes, Mr. Mauro.

**Mr. Bill Mauro:** Point one, "That the committee meet in Toronto on Monday, June 9, 2008"—do we have a time set for that meeting?

**The Chair (Mrs. Linda Jeffrey):** It's 2 o'clock on Monday. It's from 2 to 6.

**Mr. Bill Mauro:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Any further questions? Seeing none, committee, you've done a great job. You're adjourned.

*The committee adjourned at 1645.*







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First Session, 39<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 39<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 9 June 2008

# Journal des débats (Hansard)

Lundi 9 juin 2008

## Standing Committee on General Government

Smoke-Free Ontario  
Amendment Act, 2008

## Comité permanent des affaires gouvernementales

Loi de 2008 modifiant la Loi  
favorisant un Ontario sans fumée

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 9 June 2008

Lundi 9 juin 2008

*The committee met at 1401 in room 228.*SMOKE-FREE ONTARIO  
AMENDMENT ACT, 2008LOI DE 2008 MODIFIANT LA LOI  
FAVORISANT UN ONTARIO SANS FUMÉE

Consideration of Bill 69, An Act to protect children from second-hand tobacco smoke in motor vehicles by amending the Smoke-Free Ontario Act / Projet de loi 69, Loi modifiant la Loi favorisant un Ontario sans fumée pour protéger les enfants contre le tabagisme passif dans les véhicules automobiles.

STATEMENT BY THE MINISTER  
AND RESPONSES

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. It's 2 o'clock and the Standing Committee on General Government is called to order. We're here to talk about Bill 69, An Act to protect children from second-hand tobacco smoke in motor vehicles by amending the Smoke-Free Ontario Act.

Our first delegate is Minister Best, the Minister of Health Promotion. Welcome. Minister, once you get yourself settled—

**Hon. Margaret R. Best:** I appreciate that, Chair.

**The Chair (Mrs. Linda Jeffrey):** Any staff that you'd like to bring, if you could introduce them, if they're going to be speaking today, for Hansard. Once you begin, you'll have 15 minutes to make your presentation.

**Hon. Margaret R. Best:** Good afternoon, everyone, and thank you, Madam Chair. I would like to introduce my deputy minister, Ms. Cynthia Morton, who is sitting here with me, and we do have some additional staff behind us. I have Michelle Mysak, Halyna Perun, Dean Williams and Jackie Wood with me today from my office. Just give me a minute so that I can get organized here. I'm not quite organized to start.

First of all, I would like to begin by acknowledging my colleague David Oraziatti, who's not here, who was the person who initially brought this smoking ban in cars with children to our attention. His drive and his dedication have brought us to this milestone hearing on Bill 69, an act to amend the Smoke-Free Ontario Act and an

act that will protect our children from second-hand smoke. I want to thank David for his hard work.

Tobacco use is the number one cause of preventable disease and death in Ontario. Over 13,000 Ontarians die every year from tobacco-related illnesses. Tobacco-related diseases have been estimated to account for \$1.6 billion in direct health care costs and \$4.4 billion in productivity losses every year.

Our government has made remarkable progress. We accomplished this by introducing one of the most aggressive and comprehensive tobacco control strategies in North America—

**Mr. David Oraziatti:** Good afternoon.

**Hon. Margaret R. Best:** Good afternoon, David. I must say that I started off by thanking you for introducing the bill and for all your hard work with it.

**Mr. David Oraziatti:** I see that. Thank you very much.

**Hon. Margaret R. Best:** We established a province-wide law for smoke-free environments when the Smoke-Free Ontario Act became law on May 31, 2006. We have helped more than 150,000 smokers in their efforts to quit smoking through programs like the Driven to Quit Challenge and the smokers' helpline.

In the 2008 budget, we have committed to a permanent retail sales tax exemption for nicotine replacement therapies to help Ontario smokers to quit. Just a little bit more than a week ago, on May 31, we took the power walls down, and once again, we have achieved widespread voluntary compliance, estimated at 95% compliance by May 31.

Bill 69 is indeed the next step forward. The primary objective of the Smoke-Free Ontario Act has always been to protect people from second-hand smoke in enclosed public spaces and workplaces. This amendment will extend province-wide protection to children in motor vehicles.

Science shows that second-hand smoke in vehicles is particularly harmful, and even more so for children. Recent studies suggest that the concentration of toxins in vehicles can be up to 27 times worse than in a smoker's home. The Ontario Medical Association found that children exposed to second-hand smoke are more likely to suffer sudden infant death syndrome, acute respiratory infections, ear infections and more severe asthma. The medical science is clear: Second-hand smoke is dangerous to our children's health. Yet a Health Canada study



in 2005 estimated that 140,000 children in Ontario between the ages of 12 and 16 years old were exposed to second-hand smoke in vehicles during a one-month period.

As a government, we are also very aware that even acting in the public interest needs public support. In January of this year, a poll released by the Canadian Cancer Society showed that over 80% of Ontarians, including 66% of smokers in Ontario, support a ban on smoking in vehicles with children. We are confident that the public is ready for this proposed ban to protect the health of our children.

Support also comes from leading non-governmental health organizations, such as the OMA, the Ontario Lung Association, the Heart and Stroke Foundation of Ontario, and also from the Ontario division of the Canadian Cancer Society, whose CEO, Peter Goodhand, has said, "Children don't have a choice when it comes to exposure to second-hand smoke while travelling in a vehicle.... We congratulate the Ontario government for taking this step to protect children's health." That's a direct quote. The people of Ontario are ready for legislation to protect our children from being exposed to second-hand smoke in motor vehicles.

Our experience with the Smoke-Free Ontario Act, including the display ban on tobacco products, has been a high level of voluntary compliance. We are confidently anticipating wide voluntary compliance for this amendment, especially given the level of public support.

As with any legislation, this ban will still require some level of enforcement. The proposal includes a partnership with police services across the province to enforce the legislation. Enforcement of the law is important, but voluntary compliance is always our goal, and our government knows that public awareness is key to making this happen. This legislative process alone has brought greater public awareness and education. If this bill is passed, we also plan to deliver a multi-layered public education campaign with the Smoke-Free Ontario partners across the province that will reach out to people whenever and wherever they think about their vehicles and their children.

In addition to public education and enforcement, we will also be leveraging all the components of the smoke-free Ontario strategy to ensure voluntary compliance, including programs to help smokers quit and working with our partners in public health to continue to champion this worthy cause and to raise awareness about the dangers of tobacco smoke, in particular the dangers to our children.

This is about the safety and well-being of our children. The Premier and our government are committed to this, and our partners are also committed to this. I appeal to all Ontarians to commit to smoke-free cars for our children's sake. In the words of the Ontario Lung Association, this is about giving a voice to the backseat, and I would say this is the next step towards a healthier, smoke-free Ontario.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Minister. As agreed to at subcommittee, all parties will

be able to ask questions or comment on your presentation. The first group will be the opposition.

**1410**

**Mrs. Joyce Savoline:** Minister, thank you for agreeing to be with us today. I think it was really important for you to be here at the top of the meeting before we begin our delegation process. So I appreciate that you've taken the time to be here.

I know you've quoted from a Health Canada study that 144,000 children are affected every month by second-hand smoke. In December 2007, my colleague from Kitchener-Waterloo tabled a resolution which asked you to begin an education component immediately with respect to the negative effects of second-hand smoke. So as a mother and now, happily, as a grandmother, I wonder if you could explain the delayed implementation of such an awareness campaign—an educational component that could have helped perhaps thousands of children every month between December and now.

**Hon. Margaret R. Best:** Thank you very much for your question. I will answer and then I will turn it over to my deputy to also answer this question.

First of all, I am a mother as well. I have three children who are now adults, and they have never smoked. I certainly believe that in terms of educational awareness with respect to this particular piece of legislation and getting the information out to the public, I think it was very much out in the public domain from the moment it was introduced as a private member's bill by David Orazietti. People have been talking about this particular piece of legislation and how important it is for us to pass it, because it is so important to the health of the children of Ontario.

While the formal process of educating the public has not been started because we are presently waiting for the bill to actually become legislation, certainly, in a very informal way, with the process of the bill coming to the House and going through the first and second reading, it has raised awareness. There has also been an enormous amount of coverage in the media about this particular piece of legislation. As I said before, a huge percentage of the population of Ontario is indeed in favour of it—up to 80% of people who are non-smokers and up to 66% of smokers. So I believe there has been much awareness raised over the period between the initial introduction and where we are today.

**Mrs. Joyce Savoline:** As you are aware, Minister, I presented a private member's bill some short weeks ago, and what I was trying to do was include the smoking of marijuana in public places—what I think is a very good act. It didn't cover just controlled substances, where, as opportunity strikes, people take advantage of those opportunities, and we're having people smoking marijuana for medicinal purposes in public places. It didn't go forward and never really saw the light of day, unfortunately.

I'm wondering if you think that is an important component, that marijuana smoking and controlled sub-



stances should be included in your act. It isn't just tobacco smoke; it's marijuana smoke as well. To specify it, I think, really nails it down for people, because it isn't just the driver, who probably—hopefully—would not be smoking a controlled substance in a car, but any passenger might be. I'm wondering if you think that's an important component that should be included in your bill.

**Hon. Margaret R. Best:** As I believe you are aware, and most people here in this room today are also aware, the Smoke-Free Ontario Act, in fact, predates my coming into this ministry. When it became legislation in Ontario, the act dealt specifically—and still deals specifically—with tobacco products. I understand the dilemma that is faced by people who have a situation where they have to rely on smoking of—

**Mrs. Joyce Savoline:** Yes, and I'm not making a judgment call on that in the least.

**Hon. Margaret R. Best:** Can I please—

**The Chair (Mrs. Linda Jeffrey):** I'm sorry; the time has expired.

Ms. Gélinas, you have five minutes.

**M<sup>me</sup> France Gélinas:** All right; I'll speak fast. First of all, the Smoke-Free Ontario Act is something the NDP supports and will continue to support. We think the amendment through Bill 69 is something good. We would like to make it just a tiny bit better.

At the end of the day, as you said in your opening comments, the Smoke-Free Ontario Act has always been to protect people from second-hand smoke in enclosed public places. We understand that there are some physiological issues with small children, with breathing rates, etc., but we would really like to see all children to age 19 protected. There is an opportunity now to do this right. I have talked to you about it, and hope you will consider not only children below 16 but below 19 present in a car. Your comments on that?

**Hon. Margaret R. Best:** Certainly the issue of the right age for the cut-off was raised during discussions surrounding Bill 69. It was decided that 16 was the right age for this particular bill, because it coincides with the Health Care Consent Act age of 16. Also, in the many discussions I had around different tables, people were of the opinion that after age 16 young people are able to voice their concerns if they are indeed in a motor vehicle with someone smoking, as opposed to a young child who may not be able to ask someone to butt out. That was the reason we looked at the age of 16 for this legislation. Also, there were other jurisdictions that had passed legislation, and the age in some of the other jurisdictions was 16.

**M<sup>me</sup> France Gélinas:** I would just end by saying, never underestimate the power of a 17-year-old telling his dad or his mom not to smoke because it's the law. We have a golden opportunity for health promotion here that I wouldn't want to let go.

The other one is about compliance. I agree with you that we expect high voluntary compliance, etc., but to achieve 100% it would be good if, when the law is put in motion, there is a grace period, maybe 90 days, when it

would be enforced but there wouldn't be a fine; there would just be a warning. Our public health, and people involved in health promotion in and around the northeast, would be very interested in having this 90-day grace period to really focus, work with police enforcement, do some spot checks etc., but don't give them fines, give them warnings. Have a 90-day period built in. I hope you'll also consider that.

**Hon. Margaret R. Best:** I guess I should have said, and apologize for not saying first of all, thank you for supporting this piece of legislation. We appreciate that support.

With respect to the grace period, I have to say that once a bill becomes legislation in the province, I, as a minister of the crown, cannot fetter the discretion of the people who are called on to enforce that particular piece, or any legislation, for that matter. We can certainly discuss it within the ministry to see how we can deal with the issue you've raised.

We certainly understand the issue, but as I said before, this issue has been in the public domain for quite some period now, and so I believe the public are well aware of the issue, and most people, whether they're parents or not, are aware that second-hand smoke is dangerous to one's health. But we will work with the police officers who are going to be enforcing this to see if there is some way we can effect some kind of progressive enforcement, when and if this particular bill becomes law.

**M<sup>me</sup> France Gélinas:** I know that at the local level—

**The Chair (Mrs. Linda Jeffrey):** I'm sorry; the time is up. Are there any questions on the government side?

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**Mr. David Oraziotti:** I just want to thank the minister for introducing the bill in the Legislature, and as well my colleagues and members of the opposition who support the bill. I'm very pleased with its introduction in the present form. I think there are a number of reasons why, and I think we can certainly talk about those in committee today.

I think the biggest challenge to the amendment is that if we're going to have 17- and 18-year-olds operating vehicles, we're going to be pulling them over and fining them for smoking while operating the vehicle and having a cigarette. I don't think that's where we want to be with the legislation. I know there are a few individuals who would say otherwise and that the age should be changed, but I think it's a good bill in its current form.

We're still very much on the cutting edge in North America in this regard. Nova Scotia has passed this legislation, but there are no other provinces that have passed it yet. There are some private members' bills that have been introduced in places like British Columbia and Yukon, and some U.S. jurisdictions where it has passed as well.

I like the fact that it is primary enforcement. In my conversations with enforcement officers, they have indicated that enforcement is not an issue. This is something that perhaps they can do when pulling over someone who



is not wearing a seat belt, and dealing with it in that fashion.

I think I would be remiss if I didn't recognize all the health organizations that have stepped up to the plate and really helped carry this bill, and been really supportive of what our government is doing in this regard: the Heart and Stroke Foundation, the Lung Association, the Ontario Tobacco-Free Network. I see some familiar faces in the chamber today, and I'm very pleased to see them. I want to thank them very much for their support; I think it has certainly helped raise awareness across the province.

I think it will become one of those things where you see other provinces pass this legislation. If you think back to the time when you could smoke on an airplane, people would think that's pretty outrageous today, but yet, it happened. This is one more step forward in the right direction on this, and I want to thank you, Minister, for leading this bill in the Legislature.

**Hon. Margaret R. Best:** Thank you very much, David, and I want to say again that I really appreciate the work you have done on this. I want to echo the things you have said with one exception: I want to correct what I believe is a misconception regarding young people over the age of 16 smoking in a motor vehicle by themselves.

It has come up a number of times that people have said they may be fined for second-hand smoking. If a person is alone in a motor vehicle smoking by himself or herself, this is not second-hand smoke; it's primary smoke and will not be subject to this legislation. We do have many different programs within the ministry that are aimed and targeted at young people and teenagers to help them stop smoking or prevent them from starting. In fact, our recent studies show that the incidence of smoking among young people between grades 7 and 12 has decreased by about 72% over the last few years.

**The Chair (Mrs. Linda Jeffrey):** That concludes our presentation portion of the meeting. Thank you, Minister. We appreciate your being here today and taking time to speak to us.

**Hon. Margaret R. Best:** It's my pleasure.

#### CANADIAN CANCER SOCIETY, ONTARIO DIVISION

**The Chair (Mrs. Linda Jeffrey):** Our first delegation is the Canadian Cancer Society, Ontario division. Welcome. We thank you for asking to appear and appreciate your being here today. Once you get yourselves settled, could you introduce yourselves, if you're both going to speak, and the organization you speak for. You will have 15 minutes. If you leave sufficient time at the end, there will be an opportunity for all parties to ask questions about your presentation.

**Mr. Peter Goodhand:** Thank you. I am Peter Goodhand. I'm the CEO of the Canadian Cancer Society in Ontario. With me today is Irene Gallagher, senior manager of public issues. I'll be doing the presentation; we may both be answering the questions.

It's my pleasure to be here today to express the Canadian Cancer Society's support for Bill 69, An Act to protect children from second-hand tobacco smoke in motor vehicles by amending the Smoke-Free Ontario Act. The introduction of Bill 69 builds on the government of Ontario's strong leadership in cancer prevention, following the introduction of the colorectal cancer screening program and the implementation of smoke-free Ontario, which included, this last month, the much-lauded and much-awaited-for ban on display in retail environments.

As I'm sure you're aware, cancer is a leading health issue in Ontario. This year alone, 63,000 Ontarians will be diagnosed with cancer and 27,300 deaths from cancer will occur. Fifty percent of cancers can be prevented through healthy lifestyle changes made by individuals and by policies put in place by legislators like yourselves to protect the public, such as banning smoking in motor vehicles where children are present.

The Canadian Cancer Society staff and volunteers have long advocated for tobacco control measures in Ontario, and although progress has been made in some key areas, tobacco remains a high priority for this society, as it is by far the major cause of both cancer morbidity and mortality.

The following facts illustrate the impact that tobacco has. Tobacco is responsible for 30% of cancers and 85% of lung cancers. As Minister Best said a few minutes ago, 13,000 Ontarians die every year from smoking.

Second-hand smoke contains 50 known carcinogens. Simply put, according to the World Health Organization, there is no safe level of exposure. In 2005, the state of California's air resources board compared a large number of studies measuring second-hand particle concentrations in different environments and found that in-car concentrations can reach many times those found in a smoker's home. A study conducted closer to home in March 2008 confirmed previous results indicating that a cigarette in a car creates a hazardous environment. A single cigarette can generate very high levels of tobacco smoke, sometimes on a par with those found in those smoky bars that we remember.

The passage of Bill 69 is essential, not only because young children don't have a choice when it comes to exposure to second-hand smoke while travelling in a vehicle, but also because the risk to their health is serious because of this confined space and because children breathe more air relative to their body weight.

Health Canada reports that children regularly exposed to second-hand smoke are 50% more likely to suffer damage to their lungs or breathing problems. In addition, those exposed to second-hand smoke for a long period are more likely to develop and die from heart disease, breathing problems and lung cancer.

The passage and implementation of this bill will also support current educational efforts around the risks of smoking and will further denormalize tobacco use, as children will see parents and caregivers refraining from smoking while they're in the vehicle.



Legislation similar to Bill 69 has passed in 14 other jurisdictions, including the provinces of Nova Scotia and British Columbia, Yukon Territory, and states such as California and Maine.

The public expects and wants the government to act to protect children from second-hand smoke. As mentioned earlier, 85% of Ontarians support this type of legislation according to a poll conducted for us in January this year, and in one conducted in 2007 for the Ontario Tobacco-Free Network, even 66% of smokers supported this direction.

In addition to legislation, a very effective way to eliminate children's exposure to second-hand smoke is to provide help to parents and caregivers who smoke. The Canadian Cancer Society operates, with support from the Ministry of Health Promotion, the smokers' helpline, a free, confidential service that provides personalized support, advice and information about quitting smoking. We know that quitting smoking is one of the most difficult addictions to deal with, and it's something that requires a lot of support and encouragement, rather than criticism.

The society also encourages parents and others not to wait for legislation to protect children. We would like it that when they buckle up, at the same time they butt out. Parents and caregivers should refrain from smoking in their vehicles at all times, as second-hand smoke can be diluted but not completely eliminated from a vehicle.

1430

The society encourages the government of Ontario to educate Ontarians that even after a cigarette is put out, second-hand smoke remains in the environment—for instance, on upholstery, carpeting and clothing—for days and weeks and can still be toxic to children and their families.

Thank you all for your time and consideration. Once again, the Canadian Cancer Society applauds and commends the government for its commitment to cancer prevention. We'd be pleased to answer any questions.

**The Chair (Mrs. Linda Jeffrey):** Thank you. You've left about three minutes for each party to ask questions, beginning with Ms. Gélinas.

**M<sup>me</sup> France Gélinas:** It's a pleasure to meet you, Mr. Goodhand. I've certainly heard lots of good things about you. I've read attentively lots of the research that the Canadian Cancer Society has put forward. You already know our position: We support Bill 69 and think that it is a step in the right direction.

My background is in health promotion. I spent 13 years in community health centres, with some of that as a health promoter, and I certainly view an opportunity with this bill to do more than what is there. I would like, if you're comfortable with it, your opinion as to making it 19 and younger rather than 16 and younger. Is it your view that this bill would be strengthened or weakened by it?

**Mr. Peter Goodhand:** As we were preparing for that as a potential question, I think we would probably support an older age, apart from some of the complexities

that it brings around drivers and things like that. Taking it forward to 19 would not be a problem for us, but looking at the most vulnerable parts of our society and the people who don't have that voice, we're comfortable with the way the act is today. We wouldn't oppose it going longer.

**M<sup>me</sup> France Gélinas:** I see. But you wouldn't oppose it if it was 19?

*Interjection.*

**M<sup>me</sup> France Gélinas:** Okay. Have you ever polled to see if there's a difference in support at 16 or 19?

**Mr. Peter Goodhand:** I'm not sure—

**Ms. Irene Gallagher:** No, we haven't done a poll specifically on the age. The poll conducted by the Ontario Tobacco-Free Network was for age 16.

**M<sup>me</sup> France Gélinas:** I know that for one of the provinces out east, they've put it at 19 and below. So I was just curious to see.

The other part was towards enforcement, where we could put an amendment in the bill that says that the first three months that the bill comes into effect, you couldn't fine; you would only be able to give warnings. You addressed that a little bit in your presentation by saying that it's really hard to quit smoking, and that usually help and support goes a lot further than a big stick. Again, your view as to giving three months' grace to give people on the ground level time to work it out?

**Mr. Peter Goodhand:** I think we were very pleased that moving forward is primary enforcement. I thought that was a key aspect of this. In terms of a grace period, I'm not sure I could see it. It's a double-edged sword, in that what you wouldn't want to do is create the impression that it was a soft stop, or that people could just get a warning and keep getting a warning forever. So I guess the challenge with a grace period is for how long and whether it depends on which police officer stops you and how you speak to him. This is something that is so black and white—that it is the wrong thing to do—I'm not sure that a grace period is a great idea.

**M<sup>me</sup> France Gélinas:** Yes, smoking in cars is the wrong thing to do. We also expect a high level of compliance, but we also know—in my riding, anyway—that there are pockets of people that have already been identified, as it will be hard for those people to comply with the law. The opportunity to work for three months with those people to get them to find strategies to not smoke in cars is something that would be welcome at the local level with people who work in health promotion.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Ms. Gélinas.

From the government side, Mr. Mauro.

**Mr. Bill Mauro:** Mr. Goodhand, thank you for being here today. We appreciate your attendance.

Just a comment on the previous question before I ask you my question: As an organization that clearly favours no smoking at all by any segment of the population, let alone 16- or 19-year-olds, it would come as no surprise to any of us sitting around the table, I'm sure, that your organization would not be opposed to seeing the age



raised from 16 to 19 years. I think that's obvious to all of us sitting around the table. I want you to know I did appreciate your sensitivity in the way you answered the question that was posed to you. It was very well handled.

My question for you is that, in your role—and I'm not sure how long you've been with the Canadian Cancer Society, or your predecessors. Can you outline for me and for those of us in the room and around the table any of the work or requests and advocacy that your organization conducted with previous governments, or even with our government, when it came to issues like the Smoke-Free Ontario Act, second-hand smoke, if in fact you were there and are able to speak to any of those issues? Because I think, as the second province in Canada, we're feeling pretty good about what we're bringing forward here today.

**Mr. Peter Goodhand:** I've been there almost four years. I guess it's four years next month. So in lots of respects I arrived at exactly the right time to be riding the crest of the wave, after people like Michael Perley, who is in the back of the room, had probably spent a decade or more raising the issues, trying to bring them to the fore; at times, I know, being a voice in the wilderness and at other times getting some traction, whether it be federal or provincial.

Clearly, we were very pleased with Smoke-Free Ontario. It did lead the way. It did include some great pieces of progress that we were pleased with. As I say, we waited three years for the retail display ban. It's the same issue of normalization versus denormalization. We are reaching the point where children growing up cannot easily be fooled into thinking that tobacco smoking is normal. There are not many places now where it is normal, where it's business as usual, and I think that's a huge shift.

The minister talked about the reduction in youth smoking. Still, the last statistic I saw is that 90% of people will start smoking before the age of 20. The behaviour starts then, the addiction starts then, and when we're getting people to quit in their 20s, 30s, 40s and 50s, it's because they were introduced to tobacco and to tobacco smoking in their teens.

We don't think by any means that the tobacco job is done. There are other aspects of tobacco regulation and access that we're not particularly pleased with at the moment, but I would say that Smoke-Free Ontario has been a huge step forward.

**Mrs. Joyce Savoline:** I too want to congratulate you, Mr. Goodhand, for, first of all, being here today, but also for the kind of work that the cancer society does in our communities.

My mother died of lung cancer over 30 years ago, so I was very personally touched, and have since had family members and friends who have also been touched by cancer. I doubt there's anybody in this province who has not been touched by it. So thank you for the work that your organization does.

I too am very supportive of this bill. I'm very supportive of the no-smoking act that we have here in On-

tario, but I wonder if it goes far enough, given that we've got opportunities now to add some strength to it. As I said to the minister, I had a private member's bill that I know members of your organization supported, and that was to eliminate the smoking of marijuana for medicinal purposes—for that to be included in the no-smoking tobacco. I'm wondering if it is recognized by your organization that second-hand smoke from marijuana is as harmful as tobacco smoke in enclosed places.

**Mr. Peter Goodhand:** I'll answer it and then, as the minister did, I'll ask for some support to my left. The latest information we have on marijuana is that there is suggestive evidence that there is also a carcinogen effect as a risk. Anything of that nature that you burn and is combustible has a high potential to produce carcinogens. We don't have anything like the data on it that we do for tobacco smoke. What I wouldn't want is to see the bill in any way confused, diluted, complicated by mixing that message. I think if we've got a substance that is controlled in a different way, with different legislation, then where it's smoked and when it's smoked should be addressed by that piece—

**Mrs. Joyce Savoline:** But it isn't. Medicinal marijuana can be smoked in public places, which includes automobiles. We're talking about smoking in cars with kids under the age of 16. Right now, a passenger in a car could smoke marijuana for medicinal purposes. Would your organization support that?

1440

**Mr. Peter Goodhand:** I'll pass it to Irene in a minute. I'm pretty sure that, based on what we know today, there is a similar potential for harm from that kind of smoke as there is from tobacco. We would want it to be dealt with. Whether this is the right approach, I'm not sure.

Irene, do you want to comment?

**Ms. Irene Gallagher:** I would just add that the bill that I know you had put forward—the Canadian Cancer Society, when that bill was introduced, was interested in commenting on it, and we will look forward to an opportunity, potentially in the future, if that goes to committee—

**Mrs. Joyce Savoline:** I hope that you have one.

**Ms. Irene Gallagher:** As Peter said, right now in the Smoke-Free Ontario Act, the definition is lit tobacco. To ensure that this bill is consistent with that and to ensure that it has a speedy passage and implementation, we are supportive of it as is. But just to add to that, the bill you introduced does raise some other very important issues around smoking outside of public entrances and on patios. We absolutely would look forward to an opportunity to comment more on those issues as well as marijuana at a separate committee hearing.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much. We appreciate you being here today.

#### HEART AND STROKE FOUNDATION OF ONTARIO

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the Heart and Stroke Foundation of Ontario.



**Mr. Rocco Rossi:** I love the fact that Peter's my warm-up act.

**The Chair (Mrs. Linda Jeffrey):** We try to accommodate. Is it Mr. Rossi?

**Mr. Rocco Rossi:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Welcome. As you get yourself settled, I'm sure you know that you have to introduce yourself and the organization you speak for, and after you've done that you'll have 15 minutes. If you leave us some time at the end, we'll be able to ask questions. We have your handout already delivered to us.

**Mr. Rocco Rossi:** Thank you, Madam Chair. My name is Rocco Rossi. I'm CEO of the Heart and Stroke Foundation of Ontario. I'm delighted to be here on behalf of the foundation to congratulate the government on this initiative and to offer our advice and input.

As most of you know, the Heart and Stroke Foundation is a community-based foundation. We have 300 full-time staff, 40,000 volunteers across the province in 30 offices from Cornwall to Chatham to Timmins, and this year we will invest in excess of \$85 million in research, education, prevention and health advocacy in the province of Ontario.

Before I begin my remarks, I'd be remiss in not offering really hearty congratulations to David Oraziotti for the work that he did in championing this. It gives hope to all of us in the power of one person taking on a cause and pushing it forward. You have every reason to be proud to see your work resulting in the introduction and passage of this legislation. We'd like to congratulate you on that.

I'd also like to acknowledge the contribution made by Minister Best in making the legislation a reality. She was key in convincing the government to adopt the legislation as government policy. Congratulations to the minister. I think this is an important additional jewel in the crown of Smoke-Free Ontario; it was a missing piece. I congratulate the government for moving forward.

Frankly, we had our doubts that the day would come. The Premier's comments initially were not encouraging. Let me say that we admire and appreciate his political courage in taking a second look at the evidence and in doing the right thing. If I may offer some advice to the Premier, remember the words of the great British Prime Minister Benjamin Disraeli. After changing his mind on a key policy issue, Disraeli was criticized by an opposition member of Parliament. His response to the member was, "When I am faced with new evidence, I examine it with an open mind. If it is persuasive, I alter my opinion. What do you do, sir?" Of course, there was no answer to that because Disraeli was describing the right, honest and logical course of action. Thank you, Premier, for following the same path.

Just recently, we were able to come to Queen's Park with a message of support for Bill 8. Today we bring another positive message, offering our backing for Bill 69. Once again, we are far from alone in this stance. As I'm sure these hearings will show and as I've heard from the prior presentation, a wide range of medical and health experts agree with the legislation.

Because members of the committee will likely face a long parade of statistics, I'm not going to cite a long list in this deputation. I would, however, like to point out a few facts that put this legislation in perspective.

First, the dangers of second-hand smoke in cars have been clearly and scientifically established. The evidence comes from many detailed studies and sources: the OMA, the US EPA, the University of Toronto, the Journal of Exposure Science and Environmental Epidemiology, the University of Waterloo, the Canadian Cancer Society, the Ontario Institute for Cancer Research and so on. The point is that we have a clear, credible body of evidence that says second-hand smoke in cars is very dangerous.

You are essentially creating a smoke box in your car. Even if you crack open a window or crank up the air conditioning, you will still be producing a highly polluted environment. At best, in a well-ventilated car, the air quality measures as poor and as dangerous to sensitive groups, and in this case, sensitive groups like children. With windows closed, a single cigarette can result in an air quality index reading of more than 270, and that is described as hazardous to all individuals. Just one cigarette can cause the air inside a car to exceed by many times the EPA's safe levels for toxin exposure in 24 hours. Imagine the effects from several cigarettes in a single journey.

The second fact that is inescapable is that children are particularly vulnerable to this form of pollution. On average, children in Ontario spend nearly an hour a day in a car. They're being driven to and from school, to leisure activities and outings with their parents. It's not just a few minutes now and again; it's nearly an hour a day.

Remember too that children breathe in more air relative to their weight than adults do. This means they take in more of the hundreds of harmful substances, such as heavy metals and oxides of nitrogen, found in tobacco smoke. Finally, children are still growing, and not horizontally as the rest of us are. Their immune systems, their lungs and their hearts are still developing and are therefore more vulnerable. Second-hand smoke hurts them more than virtually any other group you can name.

The third and final fact is that people want to see this legislation passed. They want to see children better protected. The recent Ipsos Reid study found that 86% of non-smokers support this bill, not surprisingly. Perhaps surprisingly, even a strong majority of smokers, some 66%, agree that children should be safeguarded through this legislation.

For all of these reasons, we urge the Ontario Legislature to provide swift passage of Bill 69 and we urge the government to waste no time in implementing its provisions. The day this bill passes will be a great day for the future health of our children.

Finally, I want to say a few words to those who still oppose Bill 69—and I know there are none in this room—as an unwarranted intrusion into private lives or decisions. Like many debates, this boils down to a



question of individual rights versus the rights of society and I'd say the responsibilities of society.

You have the right to poison yourself. Society has the right to keep people, particularly children, safe from harm where possible. Bill 69 clarifies where we draw that line. Yes, smoking is still legal in this province. You have a right to make that decision for yourself, as foolish as that initial choice may be. As my colleague Mr. Goodhand from the cancer society put it so well, once you've made that initial choice, there really is no choice afterwards; the addiction is so great. We do not make light of that and we do not make light of the plight of cigarette smokers. All the more reason that these forms of legislation need to be clear and they need to be communicated. That's one of the reasons that, together with the OMA, we put out quite a significant radio campaign to inform Ontario citizens of the coming of this legislation and the importance of it.

We do not have the right to impose those kinds of decisions on others. We don't have the right to expose other people to clearly dangerous chemicals against their will. We do not have the right to increase other people's risk of cancer, heart disease and stroke. Above all, we do not have the right to do this to children, the most vulnerable members of our society.

Society is funny like that. There are certain things we don't let people do to kids. You can't send your kids to work as chimney sweeps. You can't leave them alone in the woods to fend for themselves. You can't lock them, with the passage of this legislation, in a metal box full of formaldehyde and carbon monoxide fumes. It's that simple and, clearly, nothing but common sense. We're pleased to come here today in support of this legislation, and I'd be happy to take your questions.

1450

**The Chair (Mrs. Linda Jeffrey):** We have about two minutes for each party to ask questions, beginning with Mr. Kular.

**Mr. Kuldip Kular:** Mr. Rossi, I really want to thank you and the Heart and Stroke Foundation of Ontario for supporting Bill 69. I agree with you that this is a very good step forward. As you know, we have to keep the children safe and healthy.

You said in your presentation that as children are growing, they need all kinds of help from adults. The question I have for you: Is there any data with the Heart and Stroke Foundation of Ontario which clearly says that second-hand smoke is dangerous to adults, but is a much, much higher risk for children?

**Mr. Rocco Rossi:** There's no question that both are true. There is a great body of evidence around the negative impact of second-hand smoke on all people, including adults. There is also evidence with respect to children. Because they are growing, and because of the amount of air relative to their weight, etc., there are indications that they are more at risk than the general population. But make no mistake: Adults also are at risk from the effects of second-hand smoke.

**The Chair (Mrs. Linda Jeffrey):** From the opposition, Mr. Bailey.

**Mr. Robert Bailey:** Thank you for your presentation. I read your deputation a little earlier and was quite impressed with it. I'll get on the record right away that I am a reformed former smoker of over 30 years. I gave it up myself—

**Mr. Rocco Rossi:** Congratulations.

**Mr. Robert Bailey:** Thank you. It must be harder today. I see people struggling more today. Anyway, I don't let anybody smoke in my car anymore or in any vehicle I'm in.

The question I have is, would your organization agree—I see you're in great support of this bill, as is our side of the House—to be a full partner with the government in the educational component of this bill, to help promote it to the general public? I know the work you do already, but as a partner?

**Mr. Rocco Rossi:** We would be absolutely delighted to partner with the government on this. We feel it is an important element.

I heard earlier the notion of a grace period. We're not in support of grace periods. We think that things should be black and white; it's so important. But we do believe that grace should be shown by educating people broadly, making them aware that this is coming, that it is unacceptable and that it will now be illegal. We would encourage that to happen.

**Mr. Robert Bailey:** Another question I have is about the effects of second-hand smoke from marijuana. I know it's going to come up here at different times during the day, and I know there is a medical component to that, but there must be children in those cars and vehicles as well. What do we do about that?

**Mr. Rocco Rossi:** Similar to what you heard from our colleagues at cancer, we don't have the body of evidence that we do with respect to tobacco. That said, I as a parent would certainly not want it smoked anywhere near children. We would certainly be open to that discussion at the appropriate time.

**The Chair (Mrs. Linda Jeffrey):** Madame Gélinas.

**M<sup>me</sup> France Gélinas:** It's a pleasure to meet you, Mr. Rossi. I enjoyed your presentation. I was just curious to see that on Wednesday there will be the opportunity for us to make amendments, and the NDP is looking at an amendment to include all children 19 and under. If the bill was to be 19 and under, would you still support it, and why would you or wouldn't you?

**Mr. Rocco Rossi:** Again, as with our colleagues at the Canadian Cancer Society, we certainly would not be opposed to raising that age. That said, what we have clear indication of societal support on is 16 and under. That's what we polled, and that's where we have clarity and certainly a sense from people of age-of-majority kinds of things.

**M<sup>me</sup> France Gélinas:** So you never polled for 19 and under?

**Mr. Rocco Rossi:** We did not.



**M<sup>me</sup> France Gélinas:** So we don't know where that stands. But generally speaking, protecting people 19 and under is not a bad idea?

**Mr. Rocco Rossi:** Ideally, we'd like to protect all people, 100 and under. That goes without saying. It's a question of making things effective and attempting to assist the broadest number as quickly as we can.

**M<sup>me</sup> France Gélinas:** I've heard you say that you're not in favour of a grace period—the amendment for 90 days with no fines but just warnings. I can tell you that in northern Ontario, where we have a higher rate of smokers, we have identified pockets of people where we know there's going to be a lot of reluctance. They also happen to be people who are very price-sensitive, and if you give them a \$125 ticket, it's really going to turn them off this bill. Your view on that?

**Mr. Rocco Rossi:** Again, as I said in my comments, we're not in favour of grace periods. What we are in favour of is enhanced education and widespread communication of the bill to the general public, and also the efforts and activities of our colleagues at the Canadian Cancer Society and others with respect to assistance in stopping smoking.

But the whole point of having it as a law is to deter, and if people feel the price sensitivity of it, our hope is that that will help them over the hump of deterrence.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Mr. Rossi. We appreciate your being here today.

#### ONTARIO CAMPAIGN FOR ACTION ON TOBACCO

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the Ontario Campaign for Action on Tobacco. Mr. Perley: Is that right?

**Mr. Michael Perley:** That's correct.

**The Chair (Mrs. Linda Jeffrey):** Welcome. Make yourself comfortable. We appreciate your being here today. As you've heard earlier on, please say your name and the organization you speak for so we get that for Hansard. Then, when you've done that, you'll have 15 minutes. If you leave us a little time, we'll be able to ask questions about your deputation. We have your handout in front of us.

**Mr. Michael Perley:** Thank you, Madam Chair and committee members. Before I start, I want to also echo the congratulations to Mr. Oraziotti for having started this ball rolling and for on two occasions talking to us about a bill. It's great that it finally was a ball that got hit out of the ballpark, so congratulations again.

The Ontario Campaign for Action on Tobacco, whose founders include the Canadian Cancer Society, the Heart and Stroke Foundation, the Lung Association, the Ontario Medical Association and the Non-Smokers' Rights Association, all welcome, as you've heard, this opportunity to support the passage of Bill 69, and we applaud the government and the Premier for the decision to expand the scope of the bill, the already excellent Smoke-Free Ontario Act.

As you've heard, first and foremost this is a bill grounded in evidence. I won't repeat the earlier references to the many studies and summaries thereof. I've attached to my presentation a short summary from the OMA of the evidence specifically concerning exposure effects in vehicles between the time that the OMA put out its first statement specifically aimed at protecting kids, called *Exposure to Second-Hand Smoke: Are We Protecting Our Kids?*, in 2004 and last year. That little summary covers the evidence. I don't want to repeat that.

There have been a number of studies that have tested a variety of in-vehicle environments, and concentrations dramatically increase. There is no doubt that this is a serious problem.

What I would like to touch on is the fact that, on the second page of my presentation, there is some other research showing that kids themselves, when they're asked about exposure to second-hand smoke, don't like it and don't think that it should be allowed.

In a study earlier this year, Canadian researchers found that while it was common for Canadian youth to be exposed to second-hand smoke in their homes or while in cars on a frequent basis in 2004, the vast majority of young people did not think that smoking should be allowed around children in these locations. So when you ask the kids themselves, they're not fond of this.

You heard about the Ipsos Reid poll earlier, which showed very high levels of support in Ontario. This builds on previous research done a few years ago by the Ontario Tobacco Research Unit, so I won't repeat that.

#### 1500

As Mr. Rossi said, some have expressed concerns about government intervention in a so-called "private" space like a vehicle—the rights and freedoms issue. I would like to touch on that for a moment. A vehicle today, contrary to what some people have said, is a very heavily regulated environment—it is not a purely private space—and particularly so when it comes to our children. Fines and loss of points are common for failure to wear seatbelts, and similar sanctions exist for failing to place children in properly installed child restraint seats. Given the extreme toxicity of cigarette smoke in enclosed vehicular environments, it is both reasonable and prudent to enact such legislation eliminating this hazard.

As you did hear previously, banning smoking in vehicles transporting children is under consideration in most other Canadian provinces and territories. Not all have legislated yet, but most recently—last week, in fact—Manitoba joined Ontario and other provinces in legislating on this matter, and virtually every other province at the senior political level has expressed interest in also proceeding.

I have two comments about the bill itself. First, we strongly support the need for primary enforcement of this bill and were very pleased when Mr. Oraziotti told us that the Ontario Association of Chiefs of Police had agreed to primary enforcement of his then private member's bill. Second, we understand that there is no increased fine or other penalty for repeat offences. Given the harm that can



be done to children by repeatedly exposing them to second-hand smoke in any setting, we believe there should be an escalation in the applicable fine for repeat offences.

In closing, we once again commend the government for this important initiative—as well as the opposition parties for their support of this bill—and urge speedy passage and implementation of Bill 69. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you. You've left just a little over three minutes for each party to ask questions, beginning with Ms. Savoline.

**Mrs. Joyce Savoline:** Thank you, Mr. Perley, for being here today and for the good work that your organization does.

I am in support of this bill; however, I feel that we're missing an opportunity here and something that I believe has some value and is common sense, and that is to include any smoking of medicinal marijuana or controlled substances within the automobile at the same time. I'm wondering whether you have a comment on that.

**Mr. Michael Perley:** Thank you. I'm certainly aware of your bill, and actually we were very interested, as I think was mentioned earlier, in the other parts of it to do with entryways. This is a part of the smoke-free issue that has not been dealt with yet and is requiring attention.

I think when we get into controlled substances, our first thought would be that it's a matter that's normally dealt with under the Criminal Code. Secondly, as I think Mr. Rossi mentioned earlier, any organic material—it might have been Mr. Goodhand, actually—when it's combusted, produces carcinogens. So I think if we're going to deal with that, given we have herbal cigarettes and we have water pipes and so on—we have other devices that may produce emissions from combustion of non-tobacco material—I think I'd echo my colleagues earlier in saying that we'd welcome an opportunity to have a much better and more fulsome discussion of this at another time. We wouldn't want to hold up Bill 69 to have that discussion, but we would strongly support having that discussion, having a hearing on that matter, because we have marijuana, but we have a number of other substances that are combusted indoors that also would need attention.

**Mrs. Joyce Savoline:** The private member's bill is, by all signs, not going anywhere, and I'm concerned now about the kids. We have an opportunity here to include something in a bill that talks specifically to our children. I'm wondering whether or not there's any support out there from all the organizations that understand the value of protecting our kids with respect to this issue—whether or not we should err on the side of caution and include this in the bill, which would allow us to go forward more quickly than waiting for a private member's bill to see the light of day.

**Mr. Michael Perley:** I think I'd have to echo my colleagues in saying that the data set is such that we'd really need to look at this more comprehensively than this opportunity allows. We should do that, but I don't

think this is the opportunity to do it, and I think that's the sense that we all have, having discussed this in fair detail.

**Mrs. Joyce Savoline:** Okay.

**The Chair (Mrs. Linda Jeffrey):** Ms. Gélinas.

**M<sup>me</sup> France Gélinas:** I'm pleased to meet you, and welcome to Queen's Park. I was really interested in your comment that young people did not think smoking should be allowed around children in these locations. In the research you're quoting, how old were those young people?

**Mr. Michael Perley:** I believe it was up to 16. I'm not sure; it may have been older. But certainly it included the 16-and-under cohort.

**M<sup>me</sup> France Gélinas:** The NDP will support this bill. We're not going to hold it back. On Wednesday afternoon, we want it to go, but we'll also propose an amendment that will be voted upon on Wednesday afternoon to protect children 19 and younger. If it was to be 19 and younger, would your organization still support the bill?

**Mr. Michael Perley:** We'd still support it. We came at this originally from the point of view of the evidence that was generated—summarized, really, and fully assessed—by the California Air Resources Board a few years ago. I think the report came out in 2005. We were primarily looking at the effects on kids in their earlier growth stages, in particular those who were strapped into child restraint seats, which usually go up to age—I don't know; it depends—10, 11, 12. So from a health point of view, that's the cohort of kids we've been particularly concerned about because of their extreme sensitivity. If the group to be protected went higher than that in terms of age, we would not oppose it at all, but we're primarily concerned with that very young group, purely based on the health effects evidence.

**M<sup>me</sup> France Gélinas:** Okay. The second part we're looking at is that, like you, I think the fines do not go up but they also start from day one. In some parts—I'm talking mainly for northern Ontario—we have a higher rate of smokers and we already know that we will have enforcement problems with some particular groups. It would be of benefit to have 90 days where you can target those groups, between the health promoters and the police, to really do education: "Hey, listen, a fine is coming." Would you be in support of this?

**Mr. Michael Perley:** I would not support a grace period; that is, a period after the law comes into force where it's not applied. We certainly had difficulties with our smoke-free bylaws when a few municipalities did that. They announced, when they passed something, that there would be a period when no enforcement occurred. The result was that those who complied with the bylaws got very aggravated because they felt certain people were getting away with non-compliance and a free ride. So we don't think grace periods work.

What I would recommend to the government, and I think we'd all support it, is a period of education, which we've heard is going to happen. Indicate, "Look, we're going to have three months of education," or however much time we can devote to it, and then past a certain



date, the hammer starts coming down. I think it's very important to have a very clear date when it comes into effect, and then past that point there's no uncertainty about whether or not you'll be subject to a fine if you do it.

**The Chair (Mrs. Linda Jeffrey):** From the government side, any questions?

**Mr. David Oraziotti:** I don't have a question; I know my colleagues do. I'll be very brief. I just want to recognize Michael Perley's tremendous advocacy on this issue. I appreciate his comments and his participation for many years in this area, and certainly Rocco Rossi and Peter Goodhand, who spoke earlier, and I know George Habib is going to be speaking shortly. So I thank everyone for coming together to support this particular initiative, and I thank you for being here today.

**The Chair (Mrs. Linda Jeffrey):** Mrs. Mitchell.

**Mrs. Carol Mitchell:** Thank you, Mr. Perley, for making your presentation. You've made a number of presentations over the years, and I do thank you for all your hard work.

My question is short. You know as well as I do that the bulk of this bill will be relying on voluntary compliance. I wanted to give you the opportunity to speak to what you think is most effective in the education component, the awareness campaign. What should it look like and who should we target?

**Mr. Michael Perley:** I think the Heart and Stroke Foundation of Ontario has a long-standing media campaign that's been supported by the government that relied—at least a few years ago, when it was focusing on second-hand smoke—on testimony about the third-party effects of someone's smoking behaviour, whether it's on a spouse or a family member, whatever. I think that kind of approach tends to get people who might otherwise resist, if they're smokers, purely on the basis that they think, "The government is after me" or "The government's trying to tell me what to do."

1510

If the campaign speaks about the effects of what someone is doing on others—and particularly, again, when you bring in children. I think the relatively few Ontarians who still haven't got the message about second-hand smoke, if they're asked to think about the impacts on others, and particularly, in this environment, in the small enclosed space that a vehicle cabin represents, on kids, maybe talking about how sensitive growing children are—Mr. Rossi outlined that earlier. I think that kind of messaging, together with just the pure information of "on such-and-such date," would be messaging that would be effective.

The Heart and Stroke campaign over several years showed very significant changes in attitudes when people were asked to think about tobacco use and its impact on others, as opposed to warnings about the dire consequences if you, Mr. and Ms. Smoker, keep smoking. I think that switch in approach, asking people to think about others, was very effective, and I think you do the same thing here.

**Mrs. Carol Mitchell:** One of the groups that has done a tremendous job in my riding is young people for tobacco control. I just wondered what your thoughts were on that.

Now, the Chair also gave me the high sign, so—

**Mr. Michael Perley:** Well, just engage them, enlist them, encourage them and support them in any way possible, for sure.

**Mrs. Carol Mitchell:** Great. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today.

## ONTARIO LUNG ASSOCIATION

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the Ontario Lung Association. Is it Mr. Habib?

**Mr. George Habib:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Welcome. Make yourself comfortable, and as you get your paperwork out, we have your presentation in front of us. When you begin, if you could say your name and the organization you speak for so that Hansard gets that, then you'll have 15 minutes. We hope you'll leave some time at the end for us to ask questions.

**Mr. George Habib:** Thanks very much, Madam Chair. Good afternoon. My name is George Habib. I'm the president and CEO of the Ontario Lung Association. It's a pleasure to be here this afternoon.

First of all, I would be remiss if I didn't extend my appreciation to Premier McGuinty for supporting the implementation of the smoke-free Ontario strategy and, more specifically, the Smoke-Free Ontario Act. The bill we are here to discuss today, Bill 69, introduced by Minister Margaret Best, is proof that this government is committed to the well-being and protection of Ontario's children, especially those with asthma.

As you know, the Lung Association is one of Canada's longest-standing, most respected not-for-profit health organizations. We're a recognized leader in the prevention of tobacco use as well as in the prevention and control of chronic lung disease, including asthma and chronic obstructive pulmonary disease; the acronym is COPD, for future reference.

This bill protects young vulnerable lungs from ceasing, from having an asthma attack, from not being able to get the next bit of air. If a child with asthma is exposed to second-hand smoke, it could prove fatal. As high as 20% of Ontario's children suffer from asthma, one of the highest rates in the country.

Many smokers understand the risks of smoking in a vehicle in the presence of children, but our respiratory health educators who answer calls on the Lung Association's asthma action helpline know that there are smoking parents out there who continue to expose their asthmatic children to second-hand smoke despite the risks.

Bill 69 protects those children from those who are not applying common sense to their smoking addiction. For this reason—reason number one—the Lung Association



supports the quick passage and implementation of Bill 69.

COPD is a disease that leaves you gasping for air, just like an asthmatic. This disease can be prevented by eliminating its number one risk factor, tobacco use. According to the Public Health Agency of Canada, in 80% to 90% of COPD cases, cigarette smoking is the principle underlying cause.

You may be asking what COPD has to do with not smoking in cars with children, because COPD usually affects a population much older than 16 years of age. Well, through banning smoking in vehicles with children, it is likely that some smokers may see this as an opportunity to quit smoking. COPD can be prevented by good public education about the health risks of smoking and second-hand smoke, and by good legislation that makes it more difficult to smoke, leading smokers to making their first quit attempt. For this reason, reason number 2, the Lung Association supports the quick passage and implementation of Bill 69.

The Lung Association's mission is to improve lung health. The Lung Association provides evidence-based information to Ontario residents, supports people with lung disease and offers professional education opportunities to health care providers across the province.

The Ontario Lung Association funds medical research through its two member-based medical societies comprised of respirologists and other allied health professionals: the Ontario Thoracic Society, OTS, and the Ontario Respiratory Care Society, ORCS. OTS and ORCS provide the Lung Association with a strong presence in the medical and health professional communities throughout the province. We trust the research and opinions of our medical societies. We know that our societies' members support the amendment to the Smoke-Free Ontario Act, protecting children from second-hand smoke in vehicles. For that final reason, reason number 3, the Lung Association supports the quick passage and implementation of Bill 69.

In conclusion, Ontario's kids will breathe easier when this legislation is passed. However, it is important, as has been mentioned previously, that it not simply be passed and done with, but that the general public, inclusive of priority populations, the media and health care professionals, must be part of this bill's implementation through a comprehensive public education strategy. We call on the government to ensure that this legislation is implemented with a strong public education component. The Lung Association, in conjunction with its two medical societies, the Ontario Thoracic Society and the Ontario Respiratory Care Society, wholly support Bill 69 and applaud the government for its quick response to the private member's bill originally introduced by Sault Ste. Marie MPP David Oraziatti last December.

The science speaks for itself: Children face the greatest health risk and are the least able to protect themselves against second-hand smoke in a vehicle. This legislation gives a strong voice to the back seat of that vehicle. It is absolutely the right thing to do.

Thank you for the opportunity to present here today.

**The Chair (Mrs. Linda Jeffrey):** You've left about three minutes for every group to ask you a question, beginning with Mr. Bailey or Ms. Savoline.

**M<sup>me</sup> France Gélinas:** I think it was mine.

**The Chair (Mrs. Linda Jeffrey):** You are absolutely right. I'm sorry, Ms. Gélinas. I didn't look at my notes.

**M<sup>me</sup> France Gélinas:** And I have three minutes?

**The Chair (Mrs. Linda Jeffrey):** Yes, you do.

**M<sup>me</sup> France Gélinas:** It's a pleasure to meet you, Mr. Habib. I must say that my grandmother had COPD, and you have been the charity of choice for our family for a long time. I appreciate the work you do.

We, as the NDP, support the quick passage and adoption of this bill and think it is a good bill. We are looking at an amendment to protect kids 19 years old and younger.

I was interested in the comments you made about your helpline, that there are smoking parents out there who continue to expose their children to second-hand smoke. Do you have an idea if that includes children aged 19 and under or just 16 and under?

**Mr. George Habib:** The evidence we've looked at has just been in the 16-and-under range. I'm sure there is other work out there that can be done to demonstrate that, but generally it has been 16 years of age and under that we've looked at.

**M<sup>me</sup> France Gélinas:** We will be looking at an amendment on Wednesday—not to hold this bill back; it will go full speed ahead, and we are interested in speedy passage and adoption. The amendment will look at changing 16 and under to 19 and under. Would you still give your support to the bill if it was so?

**Mr. George Habib:** As others before me have indicated, we certainly would support it. We don't want to do anything to hold this up. This is critical, and we would certainly support it. But we are working from evidence at the age of 16, just to be clear around that.

1520

**M<sup>me</sup> France Gélinas:** We're also looking at a period of awareness and education—I won't call it a grace period. We would like it to be clear in the legislation that it will be 90 days, and that at a certain date everybody knows, the fines will come into effect. Is this something you would support also?

**Mr. George Habib:** We would definitely support a public education program; we've been explicit about that. I outlined the audiences in this, and we certainly have more detail around that. We'd certainly support it. We're not in favour of a grace period once legislation comes in, but of public education prior and then implementation.

**M<sup>me</sup> France Gélinas:** I guess it's a question of language. We're looking at doing the same thing: having a clear education period. There are some specific target groups—especially in the north, which is the area I know better—that need that period to make the changes necessary to comply with the law.

**Mr. George Habib:** So we're saying the same thing.



**M<sup>me</sup> France Gélinas:** I think we're saying the same thing. Thank you very much.

**The Chair (Mrs. Linda Jeffrey):** Mr. Kular.

**Mr. Kuldip Kular:** Mr. Habib, thank you very much for supporting this bill and for asking for quick passage of Bill 69. I also want to thank the member for Sault Ste. Marie for bringing forward this initiative. The Minister of Health Promotion has brought this bill forward and also needs congratulations.

**Mr. George Habib:** Thank you, and we would like to thank him for including us in this as well.

**Mr. Kuldip Kular:** I, as a physician turned politician, have been involved with the Ontario Lung Association in the past through my membership in the Ontario Medical Association. The question I have for you is, one of the other presenters asked for some equitable fine for secondary offenders. Besides public education, do you have any other solutions for better compliance with this bill, or are you in favour of any fines for offenders against this bill?

**Mr. George Habib:** We're certainly in favour of public education; I think that's important. But I do think that, if enacted, there need to be fines to go along with the bill. Whether there are secondary fines to others in vehicles and so on, we haven't given that much thought, but we're certainly very supportive of the way it has been proposed to this point.

**The Chair (Mrs. Linda Jeffrey):** Mr. Mauro.

**Mr. Bill Mauro:** Mr. Habib, thank you for being here today. Like many others, the Lung Association is the group in the province and nationally that has resonated with me in terms of leading the fight on issues like this. So thanks for the work your group has done over a number of years.

Power wall advertising, which you know we've taken action on, and the Smoke-Free Ontario Act are looked at as activities that hopefully are going to lead to fewer people beginning to smoke, especially younger people. I'm not sure this particular act is viewed that way by many people in terms of perhaps the incentive for a parent who already smokes to quit smoking. As I understand it, one province—Nova Scotia, I believe—was first to pass this legislation. Do you have any sense of any success that might have been achieved in that province or any sense of what success might be achieved here in Ontario in terms of this legislation encouraging people who already smoke to quit smoking, beyond its primary goal of protecting children?

**Mr. George Habib:** I think it is early days to comment on success or non-success in Nova Scotia and other provinces, if I could say that. We are following it as closely as we can. I think the engagement of the broader community through the public education program—there was a question earlier about what we can do with youth. We are already funded to do youth advocacy through our Youth Advocacy Training Institute, funded by the Ministry of Health Promotion. We have 600 very highly motivated high school students across the province, who work with all the public health agencies. So we're very

well positioned to use those young people as part of this and they are motivated and mobilized to do that, not only with bringing down power walls but educating other young people and hopefully others through the public health agencies and on their own to be able to deliver that; also I think the work around that within aboriginal communities will be extremely important.

My sense is that what seems to be common sense would be a period of public education, implementation of the legislation and enforcement of the legislation. What I hear, what calls I get, and when I speak to and am interviewed by the media, I think they're addressing the whole area of too much legislation, and people are reacting more to that. But when you break it apart for them and talk about the science that we have and the research that we have, and that kids cannot speak for themselves at this stage of the game, people tend to back down and think about it again and then say, "Aha." It's an "aha" moment for them.

I'm not sure if I've answered your question directly, but that's really what we're seeing right now.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Bailey.

**Mr. Robert Bailey:** Thank you, Mr. Habib, and Madam Chair for the opportunity. Thank you for the good work you've done with the Ontario Lung Association. I know a number of people who are affected by COPD and it certainly is a dreadful disease.

I've asked this of a number of other deputations today. I know the work you do already on your own. Would you and your organization be willing to partner with the government in a real educational campaign to help promote this bill and the non-smoking aspect in cars with respect to children, please?

**Mr. George Habib:** I can give you the long and the short answer. It's yes.

**Mr. Robert Bailey:** Okay, good. Thank you. I guess I've got a minute?

**The Chair (Mrs. Linda Jeffrey):** You've got time.

**Mr. Robert Bailey:** Can you give me any impression you have on the effect of medical or non-medical marijuana—to me there's no difference—and its effect on children? We understand there could be the possibility of people smoking in cars in the presence of children, parents who are taking this medical—I don't see there's a difference.

**Mr. George Habib:** Well, we don't have all the evidence on that. There is work underway around that. I think it's equally as bad, if not worse. In fact, there are indicators that it may even be worse.

We're also concerned about indoor air quality and we do a lot of work in that area. We've done a lot of work in launching our website—yourhealthyhome.ca—where someone can go through and actually make their home asthma-friendly. People can go on that website. As was mentioned earlier, we're concerned about all kinds of things that might cause triggers to asthma. Certainly that would be one. So we are continuing to work on that area, but the evidence, the science, is not quite there as much



as it is around this particular bill at this stage. I've hopefully answered your question.

**Mr. Robert Bailey:** No, that's right. That's what I wanted to hear.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much, Mr. Habib, for your being here today. We appreciate your thoughtful answers.

**Mr. George Habib:** Thanks very much, Madam Chair. Thank you to the committee.

#### TORONTO PUBLIC HEALTH

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Toronto Public Health. Welcome. Do you have anybody else joining you?

**Ms. Mary-Anne McBean:** Yes, I do.

**The Chair (Mrs. Linda Jeffrey):** All right. As you get yourself settled, if you're both going to speak, could you say both your names and the organization you speak for. After you've done that—that would be for Hansard—you'll have 15 minutes to speak. If you leave a little bit of time at the end, we'll be able to ask questions. So when you're ready to begin, introduce yourself. You have the floor.

**Ms. Mary-Anne McBean:** Do you want us both to introduce ourselves at the beginning?

**The Chair (Mrs. Linda Jeffrey):** Yes, please.

**Ms. Mary-Anne McBean:** Okay. I'm Mary-Anne McBean and I'm a manager in planning and policy at Toronto Public Health. I'm representing Carol Timmings, our director. She was unable to come today. I actually brought a youth with me, and I think you'll be interested in hearing what he has to say.

**Mr. Salvatore Anania:** Hi. My name is Salvatore Anania and I'm a grade 11 student at Chaminade College School.

**Ms. Mary-Anne McBean:** I'll begin and then Sal will speak after me.

Toronto Public Health and the Toronto Board of Health strongly support Bill 69, legislation to protect children from second-hand smoke in cars. We applaud the government in addressing this important health issue. The Toronto Board of Health officially endorsed this legislation in January 2008—actually, that was the predecessor, Bill 11—and we wrote letters of support to the Premier, the Minister of Health Promotion and Toronto-area members of the provincial Parliament.

Children exposed to second-hand smoke show a greater likelihood of respiratory infection, sudden infant death syndrome, ear infections, and severe asthma, as has already been discussed. Due to smaller airways, they have a greater oxygen demand and less mature immune systems and this makes them more sensitive to second-hand smoke.

Exposure to second-hand smoke in a car for just 10 seconds can cause asthmatic episodes in children. New evidence implicates second-hand smoke in childhood cancer, leukemia and brain cancer. I have quite a few other statistics, but I understand you've already been

presented with a lot of the evidence, so I'll skip over that and give more time to Sal.

**1530**

The Smoke-Free Ontario Act and Toronto's no-smoking bylaw have provided protection from exposure to second-hand smoke in all public places and workplaces in the province and the city respectively. However, children continue to be exposed to second-hand smoke in private homes and in cars.

Toronto Public Health demonstrated leadership on the smoke-free-homes issue in 1998 as a founding member of the Breathing Space: Community Partners for Smoke-free Homes partnership. The resulting provincial partnership, mass media campaign and community activities focused on the protection of children and encouraged people to make their homes and their cars smoke-free. Toronto Public Health's comprehensive tobacco control program includes a strong emphasis on reducing exposure to second-hand smoke.

Despite concerted efforts to reduce exposure to second-hand smoke and the harmful effects to children from exposure in vehicles, approximately 22% of Torontonians continue to allow smoking in their vehicles. One in 10 adults reported exposure at least once a week, while one in 30 reported exposure to second-hand smoke in a vehicle on a daily basis. This information is from something called the rapid risk surveillance system. That is a system that's used throughout the province by a number of health units to collect this type of information on a broad range of health issues.

Toronto Public Health implemented the first Breathing Space smoke-free-vehicles campaign in partnership with select Canadian Tire stores in 2005 and has continued to educate the public about exposure to second-hand smoke in cars since then. In November 2007, Toronto Public Health supported a province-wide smoke-free-vehicles radio campaign that was coordinated through the seven tobacco control area networks in Ontario. Toronto Public Health and partners distributed educational resources through Canadian Tire, the car seat safety programs and select RIDE program locations.

I would like to conclude by narrating some experiences on a personal level. As a public health professional, it has really been gratifying to have been a part of this public health movement to protect the public from exposure to second-hand smoke. When these changes began, many segments of the public and the business community were anxious about the forthcoming changes. Through public health education campaigns, we were able to ease these anxieties. Thanks to smoke-free legislation, workers and the public are not breathing in dangerous carcinogens from tobacco every day. It's time that we afforded young children the same protection while travelling in vehicles. Nova Scotia, California, Louisiana, Arkansas, Maine, Puerto Rico, South Australia and Tasmania have passed similar legislation. I would encourage the government to pass Bill 69 without further delay.

I'm going to hand it over to Sal now.



**Mr. Salvatore Anania:** Hello. I'm currently the president of the Empowered Student Partnership, which takes care of the welfare of students in the school, and I am also a member of the leadership class. I've been involved in various initiatives in my school and community to make a difference that will improve the health of people.

Two weeks ago, I spoke to the Ontario Film Review Board regarding changing the rating of movies that have smoking in them. I participated in our school's smoke-free-vehicle campaign, and during March of this year I went to several elementary schools to speak to the children about exposure to tobacco in vehicles. I am a student who wants change, and I am passionate about living a healthy and prosperous life. I would like to thank you for allowing me to represent the youth of Ontario. I would like to see change, such as the passing of Bill 69 to protect children and youth from tobacco smoke in vehicles.

In October 2007, the leadership class received a grant from Smoke-Free Ontario through Toronto Public Health. With this grant, we were able to undertake the initiative to support Bill 11, which at the time was a private member's bill, to prevent youth from being exposed to second-hand smoke in motor vehicles. When I first heard what this bill would bring to Ontario, I decided to put all of my time and effort into helping this become a reality. This issue is of great interest to me because when I was younger, I was exposed to second-hand smoke in motor vehicles. That's why I want to see this change. So I stand here in front of you today because I'm an advocate for change.

Have a Voice was the smoke-free-vehicle campaign's name that we chose when we decided to get on board with this initiative. We want to have a say in matters that affect our lives. As you are aware, children under the age of 16 are not allowed to vote. So this campaign allowed us to have a vote and to be heard. I feel strongly that children's opinions and knowledge are often underestimated. Furthermore, the youth of today have very few opportunities to have a say about issues that affect their life and well-being.

During the Have a Voice campaign, we conducted presentations to children, faculty members and parents in over 25 elementary schools, to raise awareness about the effects of second-hand smoke on children. At these presentations, we discovered that many children are exposed to second-hand smoke in vehicles. Like most Ontarians, the majority we presented to agreed that children and youth should be protected from second-hand smoke. Therefore, we received over 700 signatures to support a bill that will protect children. Every person who signed the petition received and wore a button to acknowledge to society what they are in favour of. This petition was sent to our local MPP, Ms. Albanese, who presented it to Parliament in April.

This bill will protect children across Ontario from exposure to second-hand smoke, to be able to live a smoke-free and healthier life. At the same time, I believe

that if fewer children see tobacco products, it is more likely that they will not take up smoking.

Bill 69 is a bill that I believe will influence many people to make that change that will protect children and youth. Young people are not able to tell their parents, "Mom, Dad, can you please stop smoking? You're ruining my life." This is unrealistic, and the simple answer that most parents would give to their children is, "It's my car. I can do whatever I please," or they'll simply ignore the concerned youth and light up that cigarette that will one day kill them and their loved ones.

Being a youth, I want to see change in this world. Having a voice in order to speak one's mind and to stand for something that one believes in is the most influential tool one can use to make change and to see it be done. We rely on you, our elected officials, to bring about legislation that will protect us.

Thank you for your attention.

**The Chair (Mrs. Linda Jeffrey):** Thank you. You've left about two minutes for each party to ask questions, beginning with Ms. Jaczek.

**Ms. Helena Jaczek:** Thank you so much to Toronto Public Health for coming to present. I have a comment and then a question. I think what you've told us about the educational efforts that Toronto Public Health has engaged in—those of you in public health and those of us who were in public health were very aware of this since the Ontario Medical Association revealed the evidence related to smoking in cars with kids—is a very comprehensive educational campaign to increase knowledge and so on.

I have a question related to what I see will occur with this legislation, that there will be increased demand for cessation programs. Perhaps you could just detail for us what you are doing in that regard through Toronto Public Health.

**Ms. Mary-Anne McBean:** We've done a variety of things. We have run groups in the past, but we found that cessation groups are really not something a lot of people want to access. So we have worked with the Centre for Addiction and Mental Health in training care providers. We did a special project that was actually funded by Smoke-Free Ontario called Bent on Quitting. It was a specifically developed cessation program for people in the LGBT community, and we worked with them. We did do groups, but the whole focus was really to have people who are already providing services to people in the community to incorporate cessation messages, cessation support, when they're caring for someone. That may be social workers, community workers, people in community health centres. We worked with Sherbourne Health Centre in doing this. We also developed the teaching component with CAMH that is specific for this community.

1540

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mrs. Savoline.

**Mrs. Joyce Savoline:** Some of my question will be consistent—I'm sorry, I didn't catch your name. You spoke so quickly—the young gentleman.



**Mr. Salvatore Anania:** It's Salvatore Anania.

**Mrs. Joyce Savoline:** Sal?

**Mr. Salvatore Anania:** Yes.

**Mrs. Joyce Savoline:** Thank you for being here today. I hear your message loudly and clearly, and I know that you do speak for the majority of young people in Ontario. I have an issue with marijuana for medicinal purposes being smoked in public places, which for me extends to this issue. Logically, if you can't smoke tobacco in a confined, small space like an automobile when children are present, an adult should not be able to smoke marijuana for medicinal purposes in a small, enclosed space like a car. Could you comment on that, please?

**Mr. Salvatore Anania:** When we went to the elementary schools, we found that the parents of the majority of the students smoked in their car, and the majority of parents smoked cigarettes. When we spoke to the students one on one—because if not, the parents wouldn't say, "I've smoked marijuana in front of my child"—it was more the peer pressure, not from their parents but from their idols, that got them smoking marijuana, and it was because they were in an enclosed space with their parents that got them initially smoking that cigarette. That's why we focused more on tobacco usage in an enclosed space than on marijuana.

**Mrs. Joyce Savoline:** Do you think it would be an opportunity to include that in this bill, so that it becomes more all-encompassing, rather than wait for something to be introduced months or years down the line?

**Mr. Salvatore Anania:** No, I think that this would be a perfect opportunity to introduce it.

**The Chair (Mrs. Linda Jeffrey):** Madame G  linas.

**M<sup>me</sup> France G  linas:** It was a pleasure to hear you, Salvatore. I'm really proud of the work you've done. It's really nice that there are youth out there who take their health seriously and not only think about but act upon it. Certainly the NDP, which is the party that I represent, wants to see speedy passage of this bill. We want Bill 69 to become law. But we don't only want to protect children from second-hand smoke in cars; we also want to get youth involved, which is why we want to amend the act. It's not going to delay it or anything; it's an amendment that would be done the same day. Rather than say "16 and under," we would like it to say "19 and under," with the understanding that there are youth like you. If we give them the tools to say, "Mom, Dad, I don't want you to smoke in the car," they'll have a law that backs them up. I wanted your view on this. Do you think we should go that way?

**Mr. Salvatore Anania:** In regard to 19 years old, a 19-year-old usually drives a car. The students I've spoken to all have their own cars.

**M<sup>me</sup> France G  linas:** Under 19?

**Mr. Salvatore Anania:** Under 19, yes. Even an 18-year-old. You get your licence at 16 years old, and so my question is, would you get a fine if a 16-year-old is driving and smoking at the same time or do you have to be a passenger in the car in order to get that fine?

**M<sup>me</sup> France G  linas:** The 16-year-old who's smoking is in violation of many laws. He's not allowed to smoke,

period, so we're not talking about second-hand smoke anymore. The idea of the bill is really that it's a non-smoking 19-year-old and under who's in the car where somebody else is smoking.

**Mr. Salvatore Anania:** When we focused on 16-year-olds, we found that more parents smoked in their cars with 16-year-olds and under than 18-year-olds. Their parents take their opinions more in regard to younger people, so if a 17-year-old were to say, "Mom and Dad, I don't want you smoking in the car," they would take their comments and their welfare more into consideration.

**M<sup>me</sup> France G  linas:** And the same thing with 16? Because right now if you're 16, you're not covered; it's under 16. So in general you're not in favour of increasing it to age 19?

**The Chair (Mrs. Linda Jeffrey):** It's going to have to be a one-word answer.

**Mr. Salvatore Anania:** No.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here, both of you. We appreciate your delegation.

#### COUNCIL FOR A TOBACCO-FREE TORONTO

**The Chair (Mrs. Linda Jeffrey):** Our last delegation for today is the Council for a Tobacco-Free Toronto. Is it Ms. Hoffmeyer? Great. Welcome. Do you have a handout or anything for us?

**Ms. Jane Hoffmeyer:** No, I have no handouts.

**The Chair (Mrs. Linda Jeffrey):** We appreciate you being here today. If you could say your name and the group that you speak for. When you begin, you'll have 15 minutes, and if you leave some time, we'll be able to ask questions about your deputation.

**Ms. Jane Hoffmeyer:** Thank you, Madam Chair and committee members, for the opportunity to come and speak with you today. My name is Jane Hoffmeyer, and I'm pinch-hitting. I'm actually representing our chair, who had wanted to be here today. She's spent many years working in advocacy. Her name is Judy Myrvold. But because of the weather today and her health situation, she wasn't able to come out and attend. So I'm actually going to read her speech, word for word, for you. I don't know if any of you have met Judy before, but try to imagine Judy sitting here and not me.

"Good afternoon. My name is Judy Myrvold. I am the chair of the Council for a Tobacco-Free Toronto. As their representative before you today, I want to add our support for Bill 69, the Smoke-Free Ontario Amendment Act, 2008.

"The council has been active for over 25 years. Our council consists primarily of grassroots volunteers who are supported by members of the Canadian Cancer Society, the Lung Association, the Heart and Stroke Foundation, Toronto Public Health and the Centre for Addiction and Mental Health in our work to advocate for smoke-free initiatives, both for the city and all Ontarians.



"Over the years, we've been active in supporting a host of policy changes and education initiatives, such as the smoke-free Toronto bylaw, the Not To Kids! education campaign for retailers of tobacco products and the smoke-free-movies campaign. At the present moment, the council is involved in the second-hand smoke in multi-unit dwellings issue.

"My own involvement with the council spans 13 years. As a nurse, I was a witness to a lot of pain and suffering experienced by patients with smoking-related illnesses. Their families were also deeply affected. I wanted to make a difference by being involved in helping to prevent these illnesses. It's taken commitment, patience and hard work, but the benefits are tangible. I can now go into a restaurant and fully enjoy the experience.

"When my daughter was pregnant with her second child, we went shopping and went out for lunch in downtown Toronto. My daughter loves to dine at Mr. Greenjeans, so we ate there. At that time, all the restaurants in Toronto were 100% smoke-free. Therefore, we could enjoy smoke-free dining. I remember thinking, 'This is wonderful, that we do not need to worry about being exposed to second-hand smoke. Most importantly, we do not need to worry about the baby being exposed. This is not only wonderful; this is priceless.' Bill 69 could also serve to be priceless for those Ontario children who are at present being exposed to second-hand smoke in automobiles.

"Information at the provincial and municipal levels tells us that changes in policy have influenced the reductions in smoking rates that Ontario currently enjoys.

"Protecting ordinary citizens from the harmful effects of second-hand smoke is central to our work. Many of us are parents; some of us are grandparents. Legislation that will protect children and youth is long overdue. We should be putting their interests and rights first, not as an afterthought. It's shocking to learn that exposure to cigarette smoking within a car compared to a home is 25 times more toxic. We want legislation enacted which will protect children and youth under the age of 16 from exposure to second-hand smoke in vehicles.

"Many appliances such as car seats, for example, are legally required for children to keep them safe when riding in vehicles. Likewise, requiring vehicles to be smoke-free will also protect children so that they'll be able to breathe air free of second-hand smoke.

"We're especially concerned about young children and infants who have no voice and rely on the actions of adults to protect them from harm. I think it's fair to state that most parents are conscientious about the safety of their children and would not willingly do anything to harm them. However, there is a segment of the population that is either not aware of the hazards of second-hand smoke in the confined space of a motor vehicle, or who are aware but choose not to drive smoke-free when children are present. This amendment to the Smoke-Free Ontario Act, coupled with a public education campaign, will serve to protect those children whose parents or guardians cannot be relied upon to do so.

"Ontario, let's not be the last to enact this type of legislation. Ahead of us are Puerto Rico, Australia and California, and in Canada, the list of provinces with similar legislation in place or being introduced is growing: Nova Scotia in January and British Columbia this May. If you delay on this decision, it may result in Manitoba jumping the queue ahead of us.

"I spent this past weekend babysitting my grandchildren and I couldn't help but think how fortunate they are to live in a smoke-free home. As children, they'll never have to worry about being exposed to second-hand smoke. How very fortunate indeed. The enactment of Bill 69 is for those children who are less fortunate.

"In conclusion, I would like to argue that everyone has a right to breathe smoke-free air."

Those are Judy's words.

1550

**The Chair (Mrs. Linda Jeffrey):** Thank you. You've left about three minutes for each party to ask questions, beginning with Mrs. Savoline.

**Mrs. Joyce Savoline:** I'll be consistent with my questioning. I don't know if you've been here all afternoon.

I think it's also important to be inclusive, once we're embarking on amendment, to try to think of all the factors that apply. I think that one of the factors that applies, which was inadvertently missed in the Smoke-Free Ontario Act, is the fact that smoking marijuana or other controlled substances in public places is prohibited, because there are people who have used this as an opportunity to smoke marijuana in public places. Given that the car is such a confined place, and there may be parents or adults who feel the necessity to smoke marijuana for medicinal purposes at that time when they're in the car with children, I would like to include in this act an amendment that includes no smoking of controlled substances, like marijuana for medicinal purposes, in a car with children present. I'm wondering what your thoughts are on that.

**Ms. Jane Hoffmeyer:** I think the council would be in agreement with some of the other comments that people have responded to your question with this afternoon. There's probably evidence to indicate that that is a risk, and that as long as those sorts of amendments wouldn't delay the implementation of this bill—

**Mrs. Joyce Savoline:** I have no intention of delaying the bill. I just see this as an opportunity to take it to another level of safeguarding our kids.

**Ms. Jane Hoffmeyer:** I think they'd be in total agreement.

**Mrs. Joyce Savoline:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Ms. Gélinas.

**M<sup>me</sup> France Gélinas:** Welcome to Queen's Park. My question is also along the same line of reasoning, as I ask the same question of every speaker. The NDP would like to protect children from second-hand smoke, and also youth. Right now, the bill reads "under 16," so that means children up to 15, and we would like to change it so that it protects youth under 19. I don't know if you could talk about your council's position about protecting

youth to 19, and if you would still be in favour of the bill if we were to protect youth up to age 19.

**Ms. Jane Hoffmeyer:** I don't think it's something that's been actively discussed, so I'm not feeling that I can really comment or represent the comments of the council. I apologize.

**M<sup>me</sup> France G  linas:** I know that your council usually includes all ages, so the linkage is, for me, easy to be made, but not for you. You don't think that your council would go to 19?

**Ms. Jane Hoffmeyer:** They probably would. I think you're right: It's not a big stretch to move to that, in terms of giving some tools to people who are under the age of 19.

**M<sup>me</sup> France G  linas:** The other amendment we're looking at—here again, I guarantee you that we're not going to slow this process down; we want it to go ahead, but it's all done in the same conversation—is to put a fixed period for the education to take place, so that everybody knows that from that date to that date, education takes place on the bill, and 90 days later, the bill comes into effect with financial penalties. Is this something that you can comment on?

**Ms. Jane Hoffmeyer:** I think that the council would definitely be in support of that, and has in the past. A strong educational component is really important to enhance policy changes.

**M<sup>me</sup> France G  linas:** Thank you for your comments.

**The Chair (Mrs. Linda Jeffrey):** Mr. Orazietti.

**Mr. David Orazietti:** Thank you, Chair. No further comments from this side. I just want to thank you very much for the work that you do. On behalf of the government, thank you for your support on the bill.

**Ms. Jane Hoffmeyer:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** No other questions?

Thank you, Ms. Hoffmeyer. We appreciate your being here today.

Committee, this brings to a close the delegations that we have appearing on this issue. For administrative purposes, amendments need to be filed with the committee clerk by 5 o'clock tomorrow—that's Tuesday, June 10. The committee will meet for the purposes of clause-by-clause consideration of the bill on Wednesday, June 11.

Mrs. Savoline, do you have a question?

**Mrs. Joyce Savoline:** Can I table my amendment now, or do I have to wait until tomorrow?

**The Chair (Mrs. Linda Jeffrey):** Just give it to the clerk, as long as you do it by tomorrow at 5.

**Mrs. Joyce Savoline:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Any other comments or discussion? We're adjourned.

*The committee adjourned at 1555.*





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## STANDING COMMITTEE ON GENERAL GOVERNMENT

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## Legislative Assembly of Ontario

First Session, 39<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 39<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 11 June 2008

# Journal des débats (Hansard)

Mercredi 11 juin 2008

## Standing Committee on General Government

Smoke-Free Ontario  
Amendment Act, 2008

## Comité permanent des affaires gouvernementales

Loi de 2008 modifiant la Loi  
favorisant un Ontario sans fumée

Chair: Linda Jeffrey  
Clerk: Trevor Day

Présidente : Linda Jeffrey  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 11 June 2008

Mercredi 11 juin 2008

*The committee met at 1608 in room 228.*SMOKE-FREE ONTARIO  
AMENDMENT ACT, 2008LOI DE 2008 MODIFIANT LA LOI  
FAVORISANT UN ONTARIO SANS FUMÉE

Consideration of Bill 69, An Act to protect children from second-hand tobacco smoke in motor vehicles by amending the Smoke-Free Ontario Act / Projet de loi 69, Loi modifiant la Loi favorisant un Ontario sans fumée pour protéger les enfants contre le tabagisme passif dans les véhicules automobiles.

**The Chair (Mrs. Linda Jeffrey):** I call the Standing Committee on General Government together. We're here today to begin clause-by-clause consideration of Bill 69.

Our first section is section 1, beginning with Mrs. Savoline.

**Mrs. Joyce Savoline:** Thank you, Madam Chair. I do have an amendment; I'm not going to read it.

**The Chair (Mrs. Linda Jeffrey):** You have to read it.

**Mrs. Joyce Savoline:** Do I? I'm sorry.

**The Chair (Mrs. Linda Jeffrey):** The whole thing, word for word.

**Mrs. Joyce Savoline:** All right. I move that section 9.2 of the Smoke-Free Ontario Act, as set out in section 1 of the bill, be amended:

(a) by striking out subsection (1) and substituting the following:

"Protection for persons under 16 years old in motor vehicles

"(1) No person shall smoke tobacco or any controlled substance or hold lighted tobacco or any burning controlled substance in a motor vehicle while another person who is less than 16 years old is present in the vehicle."

and,

(b) by adding the following definition to subsection (4):

"'controlled substance' means a substance listed in schedule I, II, III, IV or V to the Controlled Drugs and Substances Act (Canada)."

It's my hope that the committee will accept this recommendation from me today and vote in favour of the amendment. I feel that there's an opportunity here to set a role model for our kids. We're trying to protect them from health hazards, and those are the effects of second-hand tobacco smoke. However, I can't imagine what a

kid would feel like, being confined in a car, if there is medicinal marijuana being smoked. I'm sure that all the passengers in that car would feel as good as the person smoking the medicinal marijuana—so just that on its own, even affecting the driver. But the effect it might have on a child boggles my mind—and that we wouldn't use this opportunity to include this in our protection of children.

I feel that at the committee there were some comments made that indicated that it was felt that the delegations didn't want the bill diluted or delayed. I don't think this does any of that. I think just the recognition that it isn't a healthy thing to have children in a confined space when somebody is smoking marijuana, for whatever reason, is not going to delay or dilute a bill. I think that if Salvatore Anania could be called a babe, then out of the mouth of babes, he said this is the "perfect opportunity" to include something like that. Here's someone who is showing leadership as a young person in our community, and I think it would behoove us to take a page out of his book and move forward with this amendment and show some protection for our children in cars with regard to medicinal marijuana.

**Ms. Helena Jaczek:** I'd like to commend Ms. Savoline for her concern for children, which of course we also share. However, the Smoke-Free Ontario Act has always focused on tobacco control, so we really do not feel that this is an appropriate mechanism to address your concerns. We heard on Monday from leading health stakeholders, and they talked about the strength of the evidence related to the risks of tobacco smoke in the confined spaces of vehicles. What I certainly heard on Monday was that the strength of the scientific evidence as it related to other substances was something that was not necessarily as strong or even as well researched. With those considerations, we would not be prepared to accept this amendment.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Seeing none, shall the motion carry? All those in favour? All those opposed?

**Mrs. Joyce Savoline:** Recorded vote.

**The Chair (Mrs. Linda Jeffrey):** You have to ask at the beginning.

That's lost.

The next motion, Ms. Gélinas.

**M<sup>me</sup> France Gélinas:** Same thing—I have to read it as is?



**The Chair (Mrs. Linda Jeffrey):** Yes.

**M<sup>me</sup> France Gélinas:** I move that subsections 9.2(1) and (2) of the Smoke-Free Ontario Act, as set out in section 1 of the bill, be amended by striking out “16 years old” wherever it appears, and by substituting “19 years old” in every case.

When I asked why 16 years old was chosen, they basically said that it lined it up with the age of consent. This argument doesn’t hold much because we all know that a 14-year-old is able to give consent; every health professional will take the word of a 14- and 15-year-old’s consent on such things as contraceptives and a lot of things in the health care system. The age of consent being 16—I don’t see how it is related to this bill whatsoever.

The other point that was brought to me was that the studies that had been done pointed to 16 years old, and I certainly agree with this. We have the Health Canada study of 2005. But you have to realize that I asked every one of the people who came and presented if they could point to a study that included 19 years old. None of them could, but neither could any of them point to a study that showed that including 19 was going to do harm.

This is very common in health promotion. There is a very small body of scientific literature that is supporting health promotion. In the best cases, it’s sparse, and most of the time it’s just not there. It is a field of health promotion for which the body of evidence is growing. There’s some good research being done but it is not very big as it stands. I’m not surprised that they couldn’t find any studies that included 19, but they couldn’t find any studies that excluded 19 either. Basically, all the presenters referenced the same two studies because those are the only two that exist.

The Smoke-Free Ontario Act is there to protect everybody. We are passing a new bill that will amend the Smoke-Free Ontario Act in a way to further the spirit of the act, to continue to protect more people more of the time. We have an opportunity to protect more people, to protect kids who are 16, 17 and 18 years old. I realize that there’s a high level of support for the law. Library research showed us that 80% of Ontarians support the law and 66% of smokers are in favour. This law is not for those people; the law is for the people who are non-compliant, who will continue to smoke when there are kids present. Those are the people who need our support; those are also the kids who need our support.

In some of the communities that I represent in my riding, the smoking rate is three times the rate of what it is in the rest of Ontario. Of course, the body of evidence is not there. I cannot tell you what the level of compliance is going to be for those groups, but my common sense tells me that those are the communities we’re going to have a tough time with.

I can see the scenario playing out in my riding where grandpa goes to pick up the 16- or 17-year-old and lights up a cigarette. The 16- or 17-year-old goes, “Grandpa, don’t smoke in the car.” Grandpa goes, “Well, you know, I sat in the arena for two hours and I couldn’t smoke. I’m just going to open up the window, honey, and we’re all

going to be fine.” To give this 16- or 17-year-old the opportunity to say, “But grandpa, it’s the law,” is going to go in line with the spirit of the Smoke-Free Ontario Act to protect more people.

There is no body of evidence for or against the ages of 16 to 19. Some jurisdictions go to 19; some go to 16. As the cancer society says, “Let’s give a voice to the back seat”; let’s give a voice to those 16- and 17-year-olds who need that little wee bit of help to convince those drivers that they want a smoke-free ride.

**Ms. Helena Jaczek:** Again, I’m absolutely sure that Madame Gélinas’s amendment is done in the spirit of good health promotion practice. Certainly we have given very careful consideration to the issue of age. You’ve pointed out the scientific evidence. The studies have been done under the age of 16. That’s been the focus of the studies, obviously. Everyone understands that lungs are not mature at that age and the risk is therefore greater. Jurisdictions, again, are not particularly helpful; they vary from Arkansas, age six, to Nova Scotia at 19.

I think it is fair to say, though, that the consultation, whether it was first with the private member’s bill, Mr. Oraziotti’s bill, or now, over the course of the last few months, with various groups such as municipal and provincial police organizations that are going to be enforcing this, with AMO, the city of Toronto, a number of stakeholders were also consulted, was based on the age of 16. Again, societal concern as it relates to the attention that this bill has attracted, various surveys that have been done—the public interest is clear and is very supportive of legislation based on the age of 16.

After due consideration of all the options, we would say that we will be maintaining the age of 16 as we have it in the bill.

1620

**The Chair (Mrs. Linda Jeffrey):** Further debate? Seeing none, shall—

**M<sup>me</sup> France Gélinas:** Am I allowed to speak again?

**The Chair (Mrs. Linda Jeffrey):** Yes.

**M<sup>me</sup> France Gélinas:** I had tried to get people from the north to come and present. We all know that the period of time was really short. I can bring their voices forward, but they certainly have not been able to be heard by you. That’s the way the cookie crumbles, and I’m ready to live with it. But there is a voice out there. It’s just because of the timeline that it hasn’t had a chance to be heard.

**The Chair (Mrs. Linda Jeffrey):** Further debate? Seeing none, shall the motion carry?

**M<sup>me</sup> France Gélinas:** Recorded vote.

**Ayes**

Gélinas, Savoline, Scott.

**Nays**

Brownell, Jaczek, Kular, Lalonde, Mauro.



**The Chair (Mrs. Linda Jeffrey):** That's lost.

Ms. Gélinas, you have the next motion.

**M<sup>me</sup> France Gélinas:** I move that section 9.2 of the Smoke-Free Ontario Act, as set out in section 1 of the bill, be amended by adding the following subsection:

"Delayed enforcement.

"(3.1) No prosecutions shall be commenced under this section for contraventions committed during the first 90 days it is in force, but police officers enforcing this section may issue warnings."

I think we've heard from everybody who presented that the key to going from 80% compliance for non-smokers, and from 66% to 100%, is education. The idea is really to give people a definite time, a 90-day period where intensive education can take place. I realize in some communities the bill has been well publicized. I can tell you that this publicity did not reach every corner of Ontario, and it certainly did not reach every corner of northern Ontario. Once the bill is proclaimed, I am hopeful that the Ministry of Health Promotion will send out a good, strong educational campaign. We're asking for 90 days for this educational campaign to reach every corner of Ontario, including remote and rural northern Ontario.

**Ms. Helena Jaczek:** There is no question that public education is crucial to the success. As we have said, obviously we're anticipating voluntary compliance for the most part. The ministry is committed to a very

comprehensive public education campaign that will reach every corner of the province. We know that—perhaps not so much in your community, but certainly in my own riding people have stopped me and want to talk about this particular bill. There has been a lot of publicity generated in this part of Ontario.

We intend to have a very comprehensive public education campaign starting. I asked the very same question earlier today: next week. There is no question that the materials are being put together and that this will be put in place at the earliest possible opportunity.

**The Chair (Mrs. Linda Jeffrey):** Further debate? Seeing none All those in favour of the motion? All those opposed? That's lost.

Shall section 1 carry? All those in favour? All those opposed? That's carried.

There are no amendments to sections 2 through 5. Shall they carry? All those in favour? All those opposed? That's carried.

Shall the title of the bill carry? All those in favour? All those opposed? That's carried.

Shall Bill 69 carry? All those in favour? All those opposed? That's carried.

Shall I report the bill to the House? All those in favour? All those opposed? That's carried.

Thank you, committee. We're adjourned.

*The committee adjourned at 1625.*







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### STANDING COMMITTEE ON GENERAL GOVERNMENT

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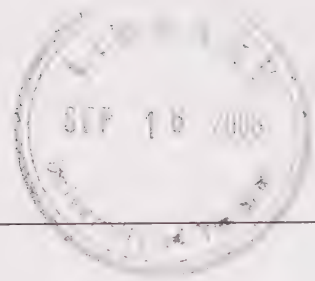
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## **Legislative Assembly of Ontario**

First Session, 39<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 39<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Monday 8 September 2008**

# **Journal des débats (Hansard)**

**Lundi 8 septembre 2008**

## **Standing Committee on General Government**

Colleges Collective  
Bargaining Act, 2008

## **Comité permanent des affaires gouvernementales**

Loi de 2008 sur la négociation  
collective dans les collèges

Chair: Linda Jeffrey  
Clerk: Trevor Day

Présidente : Linda Jeffrey  
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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 8 September 2008

Lundi 8 septembre 2008

*The committee met at 0932 in room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mrs. Linda Jeffrey):** Good morning. The Standing Committee on General Government is sitting. We're here to talk about Bill 90. Could someone read the report of the subcommittee? Mr. Mauro.

**Mr. Bill Mauro:** Your subcommittee met on Wednesday, June 18, 2008, to consider the method of proceeding on Bill 90, An Act to enact the Colleges Collective Bargaining Act, 2008, to repeal the Colleges Collective Bargaining Act and to make related amendments to other acts, and recommends the following:

(1) That the committee meet in Toronto on Monday, September 8 and Tuesday, September 9, 2008, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in English in the Toronto Star and the Globe and Mail and in French in L'Express the week of August 25, 2008.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel and the Legislative Assembly website.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Friday, August 29, 2008.

(5) That groups and individuals be offered 10 minutes for their presentation. This time is to include questions from the committee.

(6) That, in the event all witnesses cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear by 1 p.m. Friday, August 29, 2008.

(7) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on Tuesday, September 2, 2008.

(8) That the research officer provide the committee with background information prior to Tuesday, September 2, 2008.

(9) That the Minister of Training, Colleges and Universities be invited to appear before the committee to make a presentation of up to 10 minutes, followed by five minutes for each caucus to make a statement or ask questions.

(10) That the deadline for written submissions be 12 noon on Friday, September 5, 2008.

(11) That the research officer provide the committee with a summary of presentations prior to 5 p.m. on Thursday, September 11, 2008.

(12) That for administrative purposes, proposed amendments be filed with the committee clerk by 12 noon on Friday, September 12, 2008.

(13) That the committee meet for the purpose of clause-by-clause consideration of the bill on Wednesday, September 17, 2008.

(14) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Mr. Clerk, it's my understanding that all delegation requests were accommodated and that a second day, as originally contemplated, was not required.

**The Chair (Mrs. Linda Jeffrey):** Any debate or discussion? Seeing none, all those in favour? It's carried.

COLLEGES COLLECTIVE  
BARGAINING ACT, 2008LOI DE 2008 SUR LA NÉGOCIATION  
COLLECTIVE DANS LES COLLÈGES

Consideration of Bill 90, An Act to enact the Colleges Collective Bargaining Act, 2008, to repeal the Colleges Collective Bargaining Act and to make related amendments to other Acts / Projet de loi 90, Loi édictant la Loi de 2008 sur la négociation collective dans les collèges, abrogeant la Loi sur la négociation collective dans les collèges et apportant des modifications connexes à d'autres lois.

STATEMENT BY THE MINISTER  
AND RESPONSES

**The Chair (Mrs. Linda Jeffrey):** As was indicated in the report of the subcommittee, there was a request that the Minister of Training, Colleges and Universities be invited to appear before committee. He's here. Welcome, Minister Milloy. You have five minutes.

**Hon. John Milloy:** Thank you very much—

**The Chair (Mrs. Linda Jeffrey):** Sorry, 10 minutes. There's five minutes afterwards. You have 10. Sorry, my mistake.



**Hon. John Milloy:** Thank you, Madam Chair. With your permission, I'd like to call two officials to come to the table who may be able to help with some of the technical questions that come up. First of all, I'd like to introduce Catherine Laurier, who's senior policy adviser in the post-secondary division of the Ministry of Training, Colleges and Universities, and Elisabeth Scarff, who is legal counsel responsible for post-secondary education issues in TCU. I'll read a statement and then I'll be happy to take any questions. As I say, I'm pleased to be joined by two of my colleagues up here.

I'm here today to talk to you about proposed amendments to the Colleges Collective Bargaining Act, the legislation that sets out the relationship between the government and its 24 community colleges. As you are aware, Kevin Whitaker, chair of the Ontario Labour Relations Board, undertook a comprehensive review of this legislation and released his recommendations to the government in February of this year. The key recommendation arising from Mr. Whitaker's report was that collective bargaining rights be extended to part-time college workers. Our government is committed to following through on that recommendation.

To step back in history for a moment, prior to the Colleges Collective Bargaining Act, college employees were hired by the boards of governors of local colleges according to the terms, conditions and salaries established by the Ontario Council of Regents and approved by the Minister of Education—later, of course, the Minister of Colleges and Universities.

The colleges and their employees first bargained under the Public Service Act and later under the Crown Employees Collective Bargaining Act. Neither of these acts was deemed to satisfactorily address a multitude of complex issues. When the Colleges Collective Bargaining Act came into effect in 1975, it was fairly routine practice for bargaining rights to cover full-time workers, but not those who work part-time. The CCBA enshrined this practice in law.

Our government recognizes that this is an outdated situation. Most Ontarians have enjoyed the right to organize and bargain collectively for decades. Today, we are looking at proposed legislation that will modernize the colleges' collective bargaining process and give part-time workers the bargaining rights they deserve.

Our proposed Colleges Collective Bargaining Act would, if passed, provide a significant overhaul of the collective bargaining system in our colleges, bringing it more in line with modern bargaining processes used in most other Ontario workplaces. Those processes work very well: In Ontario, over 97% of contracts are settled without a strike.

Our government believes that our college system is too important to the future of our students and to our future economic success. In today's highly competitive global economy, we need every Ontarian to be able to achieve their full potential. When our people succeed, we will all succeed. That's why we must have the best post-secondary institutions and the best training opportunities possible.

Ontario's colleges will continue to play a critical role. These institutions—long a cornerstone of Ontario's post-secondary education system—play a role in helping us develop the highly skilled workers we need now and in the future. They have helped our province build an international reputation for excellence in education.

College leaders, faculty and staff work hard day in and day out to help students develop the skills they need to work in high-demand sectors of our economy. Ontario colleges have also done a tremendous job of partnering with employers to identify local economic needs and help develop talented, skilled graduates who can meet those needs. We want to help Ontario's colleges build on that success.

This bill, if it is passed, would contribute to the modernization of our college system and would ensure students continue to get the high-quality education they deserve. It would mark the first significant overhaul of collective bargaining in the college sector since the process currently in place was established in 1975. It would give part-time and sessional college workers the right to bargain collectively for the first time in Ontario.

Our government believes that this bill would establish a more stable, effective process for negotiations, covering both full-time and part-time college workers. It would mark a new era where college employers and college workers would have greater ownership of the collective bargaining process. It would, we believe, lead to a strengthened and more stable college system, better able to focus on the needs of students and better able to deliver the high-quality education Ontarians need and deserve.

This bill is the product of the hard work, ideas and insight of many people, and I want to thank everyone in the college sector who provided our government with such valuable input into this important bill during last year's public consultations and in the meetings I've had subsequently with many stakeholders.

0940

I want to give special thanks to Kevin Whitaker for his thorough review of the existing laws and for conducting the public hearings and creating the 17 recommendations that will change the status quo. Mr. Whitaker's report went far beyond just the introduction of bargaining rights to part-time college workers. He provided us with a clear road map for how this should be done to ensure that the interests of all parties are balanced and that changes ultimately benefit students through a stronger, more stable college system.

Our government took these recommendations very seriously. That's why this legislation would not only extend collective bargaining rights to part-time workers; it would also make some other important changes to how collective bargaining takes place in our college system, changes that our government believes would make collective bargaining in colleges more effective.

By improving the collective bargaining process, we can strengthen our college system to the benefit of all parties, especially students. And we can encourage more



stable, predictable labour relations so that all parties can continue to focus on providing the best education possible for students in a productive learning environment. That is what we must keep in mind when considering this legislation: Our ultimate goal is to improve the educational environment for students.

I'd like to take a moment and highlight some of the important changes in this bill for you today. First, this proposed legislation would establish two new bargaining units for part-time college workers: one for part-time and sessional faculty and another for part-time support staff. Representation of bargaining unit members would be governed through a certification process.

This proposed legislation would also allow for the creation of a new employer bargaining agent to represent all colleges in collective bargaining. This would replace the current government-appointed agency that acts on behalf of colleges during negotiations involving full-time workers.

This proposed legislation would also allow for the appointment of a conciliator to work with the parties, at their request, as is currently the case in most workplaces. This would eliminate the current fact-finding exercise, which is more cumbersome.

This is an approach that would give workplace parties more responsibility for the outcome of collective bargaining. It would streamline processes, bringing in the best of what works in other workplaces while still providing a separate framework that addresses the needs of the college sector.

We believe that this is the best approach for colleges. We believe it would address the needs of workplace parties while still keeping the needs of students front and centre. We can't forget that many part-time college support workers are in fact students themselves. So by passing this legislation, we would be helping these students participate in the collective bargaining process as well. But beyond that, this proposed legislation would strengthen our college system for all students by providing a framework for more effective labour relations.

Reforming the college collective bargaining process is part of our government's commitment to helping Ontarians develop the skills and knowledge they need to succeed. This is a key to our plans to ensure Ontario's economic future. When we can ensure that every Ontarian is able to reach their full potential, we are ensuring that Ontario will reach its full economic potential.

Thank you, and I'd be happy to respond to any questions or comments.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Minister. For the opposition, Mr. Wilson.

**Mr. Jim Wilson:** Thank you, Minister, for your statement. You're right, we're all very proud of Ontario's college system, which dates back to Bill Davis, so I thought I'd give Mr. Davis a plug in my first few sentences.

You didn't mention anything about the cost. In the consultations I've done, of course, that's the number one question on all sides. Individuals wouldn't want collective bargaining if they weren't looking for better com-

pensation and a better work environment and working conditions. And of course, the colleges are worried: We're dead last in Canada in terms of our per capita funding for colleges. Despite the promises that your government has made in two election campaigns, we're still behind the pack in terms of funding.

So I just want to know if you have any comments. Did your ministry do any modelling or scenarios with respect to the cost, not only of implementing this legislation, but also the ongoing costs that certainly the employees may be expecting?

**Hon. John Milloy:** I think I take issue with some of your comments about our government's record in terms of colleges or post-secondary education in general. Obviously, in the system as it works now, the college compensation commission, on behalf of the colleges, negotiates in this case with two groups that are represented. We're talking about extending those rights and the negotiations would continue, then, under the new regime between the employers and employees, as is the common practice, and they would reach whatever agreement they saw fit; that is, of course, assuming that the two new groups sought to be represented by a particular union.

In terms of costs, as I said at the outset, I am very proud of our government increases in funding to community colleges; it's up about 54% since 2002-03. College per-student funding was \$6,645 per full-time equivalent in 2007-08; that's per-student funding up from \$4,594. So the per-student is up 44.6%, the overall is up about 54%.

We're going to continue to work with all our post-secondary education sectors in terms of their resource needs, but in terms of the bargaining, this would obviously continue to be a separate matter between the college administration under the new body, the employer body and the various bargaining units, and with the two new ones if they chose to be represented by a particular union.

**Mr. Jim Wilson:** I kind of expected exactly that answer, but you didn't do any modelling at all. You went to cabinet and your cabinet colleagues didn't say, "What's the cost of this going to be?" Many of these part-time employees aren't paid very well, so I think there would be a huge expectation that they'll be doing catch-up. Did you not do any modelling or scenarios at all that you can table with the committee?

**Hon. John Milloy:** As I said, we continue to work with the college sector, since Reaching Higher is a five-year plan, in terms of what their resource needs are, and there is the bargaining process that goes on. We've just finished one, as I am sure you're aware, about a week and a half ago. I guess it still has to go for a vote. So we'll continue to work with all post-secondary education sectors to make sure that they continue to have resources going forward.

**Mr. Jim Wilson:** Okay; thank you.

**The Chair (Mrs. Linda Jeffrey):** Mr. Marchese.

**Mr. Rosario Marchese:** Thank you, Minister. With respect to this last exchange, I'm not proud of our record,



whether it was under the Tories or under the Liberals. We understand you put more money in, but under the Tories we were number 10 and under the Liberals we're still number 10. It's a problem and we need to deal with it. This is a separate bill that we're talking about and I'm quite happy to deal with this, obviously. Yes, there will be some costs. We hope that the college system won't have to bear with that or that students won't have to bear more of the cost as we shift more and more of our obligations of governments on to students. So I'm profoundly worried about that, but we will continue to fight governments on that basis.

I know you've received the recommendations by OPSEU, and I want to read them for the record as fast as I can because we only have a few moments. They are:

"(1) Amend the schedules in Bill 90 to include part-timers and sessionals in the existing bargaining units upon certification.

"(2) Amend section 26(1) of Bill 90 to permit either the council or the bargaining agent, or a trade union that is applying for certification as the bargaining agent for a group of college employees, to apply to the OLRB to change, establish, or eliminate bargaining units.

"(3) Amend section 26(4)(b) of Bill 90 to read, 'the day after a collective agreement has been executed in respect of each of the bargaining units that would be affected by the application.'

"(4) Amend section 30 to read, '(4) The representation vote shall be held within 14 days of the date upon which it is filed with the board; (5) Notwithstanding the provisions of subsection (4), the board may determine that the vote shall be held at a time later than specified in subsection (4) if it considers that the holding of the vote within 14 days would cause the vote to be held during a time period when the persons eligible to participate in the vote are not substantially representative of persons likely to be substantially affected by the result of the representation vote.'

"(5) Amend Bill 90 to include all of section 40 of the OLRA so collective agreements may be settled at arbitration when both parties agree to do so.

"(6) Amend Bill 90 to include all of section 43 of the OLRA so either party may apply to the board to have a bargaining unit's first contract settled at arbitration provided that the party seeking it can demonstrate that it has made a bona fide effort to bargain a collective agreement.

"(7) Amend Bill 90 to retain the provision, contained in section 45 of the current CCBA, that stipulates that collective agreements must begin on September 1 of the year they begin and expire on August 31 of their final year.

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"(8) Amend Bill 90 to retain the deemed strike or lockout provisions included in sections 59(2) and 63(3) of the current CCBA.

"(9) Amend Bill 90 to ensure that a grievance ruling at one college employer applies to all college employers. This is easily done by adding sections 48(18)(a), (b) and (d) of the OLRA to Bill 90."

There are six more. I know you must have read all of these recommendations. I wonder whether you have a comment on these, and whether you're interested in—

**Hon. John Milloy:** How much time do I have?

**Mr. Rosario Marchese:** About five minutes.

**The Chair (Mrs. Linda Jeffrey):** No, a minute and 30; 33 now.

**Hon. John Milloy:** Well, Mr. Marchese, obviously you'll be hearing from various witnesses today, and the committee will have an opportunity to discuss these in detail. My general comment is that this is about two things really, this piece of legislation: One is extending bargaining rights to these two units, and the second is to modernize the system moving forward.

Mr. Whitaker did extensive reviews and came back with very thoughtful advice. That advice talks about taking what's best of the existing Labour Relations Act, taking a look at what's unique about the college system and setting up a framework so that, first of all, we create these two units; second of all, we give a prospective union the opportunity to organize them; and if that went forward, to then sit down with what I believe is a much more level playing field, if you'll excuse the cliché, and start to negotiate that relationship. I think that a number of the concerns that are raised are issues that—once this framework is first of all established by legislation, then, based upon the will of the membership, there'll be an opportunity for negotiations to move forward in what I think is a much more modern environment that what was set out in 1975.

I apologize; I could go through each of the 16 with you, but I think the Chair is about to give me the hook.

**The Chair (Mrs. Linda Jeffrey):** Good timing. Thank you, Minister.

From the government side, Mr. Moridi.

**Mr. Reza Moridi:** I want to thank you, Minister, for bringing this bill to the House which will give bargaining rights to part-time employees of our college system. This is the group that doesn't have this right. Also, I would like to thank you, Minister, for taking the time to appear before this committee.

**Hon. John Milloy:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here and your staff for being your resource.

## COLLEGES ONTARIO

**The Chair (Mrs. Linda Jeffrey):** We're going to begin this morning with our first delegation, Colleges Ontario. Good morning, and make yourself comfortable. If you're both going to speak, I have both names here: Linda Franklin and Wallace Kenny. Is that right?

**Ms. Linda Franklin:** Right. I'll be speaking, but Wallace is here for any technical questions that are beyond me.

**The Chair (Mrs. Linda Jeffrey):** Great. When you're ready to begin, you will have 10 minutes, and if you leave time in the course of that 10 minutes, there'll be an



opportunity for each party to ask you questions about your delegation. We have your package in front of us.

**Ms. Linda Franklin:** Great. Thank you very much, and good morning. My name is Linda Franklin, for those of you who don't know me, and I am the president and CEO of Colleges Ontario. Joining me today is Wallace Kenny, a partner at Hicks Morley and the college system's expert on labour issues in general and this bill in particular.

We appreciate having this opportunity today to speak to you about Bill 90, the Colleges Collective Bargaining Act. As members of this committee will know, I'm sure, individual colleges are also appearing before you today to speak in greater detail about some of the elements in the bill that require further consideration. The recommendations we are individually presenting today are supported by the 24 publicly funded colleges right across Ontario.

In my presentation this morning, I'd like to provide an overview of the college positions, generally, on the Whitaker report and the resulting legislation, and focus on some of the key issues that we think the committee must consider in its deliberations going forward.

Just by quick way of background, I should tell you that Colleges Ontario is the advocacy organization for the province's 24 colleges of applied arts and technology. Our particular focus is advocating for public policy changes that will help improve the quality of education and training provided to our students in Ontario. We represent all 24 publicly funded colleges that have campuses in every region of the province, and we serve almost half a million students each year between part-time and full-time.

Colleges offer more than 600 programs in a wide range of areas, from health care to manufacturing to hospitality and business. Many of you on the committee have colleges or campuses in your own ridings, and I'm sure you're very familiar with the range of the programming offered and the real importance of it to your communities and to the province.

We attract students from a wide range of backgrounds and all walks of life, which is important in the economy today and going forward, as you know, and they're employed in virtually every sector of the economy.

The success of our college system has helped Ontario to become a world leader in higher education. We often see numbers talking about how advanced Canada, and particularly Ontario, is in post-secondary training, and in fact a good deal of that is due to the uniqueness of the college system in Ontario. We don't have a much higher rate of university grads—although we're doing well—than other countries, but we have a unique college system that enhances the post-secondary education experience for so many students who otherwise would not have that, and don't, in other parts of the world.

Clearly, we think our colleges are pretty essential to our success as a province, and that's going to be even truer in the years ahead. All of you know that we've been talking a great deal, particularly over the last year, about the coming skills shortage in the province, the demand

for highly skilled and educated workers, the growth in that need over time. Even now, we're being called on more and more to find new ways to reach people in our population who right now are under-represented in post-secondary education and to rethink our training so that workers looking for a second career or needing significant upgrading can find what they need in the college system. If we don't succeed in this mission, many in our society will never reach their full potential in the workforce in the coming years and our province won't be able to deal with the labour shortages that are predicted around the world. We have to be able, as colleges, to perform at our absolute best, and that means that when Ontario makes changes to the structure of the college system, we have to get it right. It's never been more important, so that's why we're here today.

As you review Bill 90 today, please be assured that the college system supports workers' rights to organize as they see fit. We have supported the Whitaker process and the resulting legislation, and we believe that appropriate processes must be in place to ensure that those rights are exercised, and exercised in ways that are fair and effective for all of our employees.

Last year, when the province appointed Kevin Whitaker to review the Colleges Collective Bargaining Act, we supported that appointment and we provided Mr. Whitaker with recommendations and suggestions, as many other groups did. You might think that's leading to a "yes, but" criticism, but in fact it's quite the opposite: We felt Mr. Whitaker produced a good, thoughtful report that can help Ontario take significant steps toward addressing employees' rights.

Our message today is quite clear: We're urging you, as legislators, to ensure that the final version of Bill 90 that you have in front of you today remains true to the intentions of the Whitaker report. Indeed, staying true to his recommendations is essential, we think, because the Colleges Collective Bargaining Act is a unique piece of legislation carefully designed to meet the needs of employees and students looking for high-quality, relevant education.

Unlike general labour relations statutes, which apply to various workplaces, the Colleges Collective Bargaining Act has always been specific to our unique sector and its needs, and for good reason. The act has recognized our diverse workplaces and hours we keep and the unique ways we operate, and many of those are quite different from a regular business environment.

Kevin Whitaker understood the special circumstances quite clearly that define Ontario colleges, and his recommendations were designed to ensure that changes to the bargaining act would be fair for employees and appropriate for colleges, their staff and their students. Bill 90, we believe, reflects many of his goals and the thinking in his report.

There are, however, and of course this is always true with draft legislation, some aspects of Bill 90 that we don't think reflect the work on the ground in Ontario's colleges and are inconsistent with Mr. Whitaker's recommendations. My colleagues here today will provide a



review of some aspects of the current bill that we think should be amended and a handful of technical drafting issues that should be addressed so that the bill actually does what it intends.

Today I'd like to focus primarily on some new proposals from OPSEU that go beyond the intent of Mr. Whitaker's report and weren't tabled during the consultations. Simply put, some of these ideas were not vetted and didn't go through proper and due consideration, and we're concerned about them coming forward to you now, so late in the day. We believe these new proposals are detrimental to the bargaining process and can disrupt the learning environment of our students. Let me just outline some of our most serious concerns.

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One of the most troubling suggestions, I think, in the new recommendations is the proposed addition of "related employer" and "successor" provisions. These provisions weren't recommended by Mr. Whitaker and come at the wrong time for Ontario. Right now, we believe that colleges need more flexibility than ever to respond to the challenges in the economy. Just think of the quick work we've had to do this year to help Ontario provide retraining opportunities to laid-off workers. In many cases, we do this by pursuing new business relationships with the private sector and with the public sector, developing training partnerships that, in some cases, follow normal business hours rather than academic schedules, and ensure that we are meeting the training needs of the future. As we're doing this, we must also recognize that the Ontario government is already struggling to address the serious operating cost pressures that exist in most colleges today, as many of you who have colleges in your areas will know very well.

While the vast majority of our programs will continue to be delivered in a traditional academic model, training needs are expanding rapidly and, in some cases, colleges must have the flexibility to innovate and reach new learners in new and non-traditional ways. Think of people who have been laid off and who need to retrain but are carrying mortgages, family commitments and high levels of expenditures. Asking those folks to sit in a college classroom for a few hours each day, over several days, is not going to be as productive to them as being able to figure out how we train them, nine to five, quickly and effectively, to get them back into the workforce.

While Ontario works to put a strategy in place to address the new economy, we must make sure that in the college system—one of the engines of the training for this new economy—many options are available to provide education and training in a cost-effective manner. Kevin Whitaker understood how essential this was, and our elected politicians must do the same. It's important to note that union rights are still protected in this bill, even if colleges continue to have this leeway, and that's another important piece of balance.

Another OPSEU recommendation would expand the binding scope of the arbitrator's decision, so that a

decision relating to one college would be binding on others. We understand the philosophy behind this, but unfortunately, circumstances vary broadly from college to college. Clearly, this kind of a recommendation would interfere with the autonomy of each college. No colleges are the same, one to the other, and there's no reason to believe that a ruling in one college necessarily has any bearing on others. Most importantly, this proposal contradicts normal legal principles and runs contrary to rulings from the Supreme Court of Canada. So we don't believe that this should be added to the legislation.

Having dealt with two of the key issues that arise from these new and untested OPSEU recommendations, I'd like to turn to the current bill before you. In general terms, as I've mentioned, we are very supportive of Bill 90. We think the drafting has been done relatively well. We think the intent is correct and that there's a good balance there.

In appointing Mr. Whitaker to review this complex area and building legislation that largely mirrors his recommendations, we think that we've gotten the big picture right. The bill achieves this as much by what it doesn't include as the things that are deliberately included. Virtually every aspect of this bill is clearly and specifically designed to force all parties to a negotiation to work harder to find resolution between them.

This hasn't always been the case in the college sector, and old legislation positions us to frequently feel that we have nothing to lose by going to an arbitrator to have them make decisions for us.

**The Chair (Mrs. Linda Jeffrey):** Ms. Franklin, you have 30 seconds left.

**Ms. Linda Franklin:** So we would urge you to look at what they've said as well as what they've not said in this bill, and to respect both.

The last recommendation that I'll put before you is that right now, the bill suggests a board of 48 people to govern this process. We used to be that way at Colleges Ontario; we've changed that governance structure because it's simply unworkable—from quorum, from discussion, from any perspective. We'd recommend that it be one college, one member—a 24-member board. It's still big, but it's more manageable. Our suggestion would be that the presidents would largely take those roles, but if a college wanted to choose a board chair instead for their expertise, that would work as well.

Those are our recommendations. Thank you, Madam Chair.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much. We appreciate you both being here today. You've exceeded the time, so there won't be any opportunity for questions. We have your presentation. Thank you very much for being here today.

**Ms. Linda Franklin:** Thank you very much.

MOHAWK COLLEGE OF APPLIED ARTS  
AND TECHNOLOGY

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Mohawk College of Applied Arts and Technology.



Good morning, gentlemen. Make yourselves comfortable. When you're ready to begin, if you're both going to be speaking, if you could say your name and your position at Mohawk, and then you'll have 10 minutes. If you use all of your time, there won't be an opportunity for us to ask questions, but if there is, each party will be able to ask questions of your presentation.

**Mr. Ronald Holgerson:** Thank you, Madam Chair. Good morning. My name is Ronald Holgerson, vice-president of marketing, communications, alumni and government relations. With me is Allan Greve, past chair of our Mohawk College board of governors. President MaryLynn West-Moynes sends her regrets. Due to a family emergency, she's not available today.

Mohawk appreciates the opportunity to present to the Standing Committee on General Government on the matter of Bill 90, An Act to enact the Colleges Collective Bargaining Act. To orient members of the committee, Mohawk annually serves 10,000 full-time, 3,000 apprenticeship and 300 international students, as well as 5,000 adult learners and 42,000 continuing education registrants. We offer 106 full-time and 18 apprenticeship programs at the four campuses in Hamilton and Brantford.

It's very important for you to understand that Mohawk provides opportunities in a region where the quality and quantity of the labour force are significantly affected by both anticipated workforce retirements and the fact that 43.7% of Hamilton, 30.2% of Burlington and 48.8% of Brantford people over 20 years of age have not accessed post-secondary education. Mohawk further believes that college, university and apprenticeship constitute the three pillars of post-secondary education and directly contribute to social, cultural and economic development and prosperity. We are very proud of our staff, all of whom are committed to providing a great learning experience for students. Mohawk currently employs 352 support, 455 faculty and 95 administrative full-time staff, as well as approximately 355 academic and 475 non-academic part-time staff, including work-study students.

With regard to Bill 90, let me first underscore that Mohawk supports the right of all college employees to associate. Any change to the Colleges Collective Bargaining Act is important to our college, and that's why we're here today. We're supportive of the intent of the legislation, and we want to speak with you about sections of the bill that we support and where we would not want to see changes made.

Before we get to specific sections of the bill, we would like to give you some background on Ontario colleges and the critical role they play in strengthening the economy. To do that, I pass the floor to Mohawk's past chair Allan Greve.

**Mr. Allan Greve:** Good morning. First, let me underscore that the success of our Ontario college system has helped our province become a world leader in higher learning, providing post-secondary education to a greater percentage of the population than many of our competitors.

Overall, about two thirds of Ontario's adult population has a post-secondary credential, including apprenticeship.

College students are taught in generally well-equipped labs by faculty with extensive experience, strong academic credentials and a commitment to student success. Colleges are active in applied research in areas such as manufacturing technologies, health and life sciences, and environmental technologies. For example, at Mohawk College we are currently working with Satyam Computer Services from India to build the first working prototype of an electronic health record for every Ontarian. A blueprint was developed by Canada Health Infoway, whose members include Canada's 14 federal, provincial and territorial deputy ministers of health.

Ontario college graduates are successful. More than 90% of Ontario college graduates find jobs within six months of graduation, and more than 93% of employers report being satisfied with the quality of the graduates hired. College graduates have played an important part in bolstering Ontario's economic strength and will be even more important in the years ahead. That is because Ontario, like many jurisdictions, is challenged by changing demographics, global competitiveness and a changing economy.

In the short term, there is an urgent need to retrain people who have lost their jobs as the economy shifts. This is particularly true in the manufacturing and the forestry sector, where plant closures have put thousands of people out of work. Often, those who lose jobs are middle-aged people with mortgages and families to support. Fortunately, the strength of the college system means we are well positioned to help people get the education and training they need to move into new careers that provide meaningful employment.

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Colleges have been working very hard to service second-career students. At Mohawk College, we established a College and Career Discovery Centre to enhance services to students seeking to enter the college, including dedicated services for second-career candidates.

In three short months, Mohawk has responded to 233 inquiries from persons seeking to further their education, and as of last week, we had registered 37 second-career students in two-year programs and 12 skills-development students in programs less than one year. To date, 18 have been approved for full funding, and we eagerly await notification for the remaining students. We look forward to helping these students establish themselves in their new careers.

Ontario's 24 colleges also play an essential part in strengthening our economy over the longer term. College programs are career and occupation focused, designed to help students pursue and achieve success in a wide range of fields: health sciences, engineering technology, business, creative and applied arts, and community and social services. Individual colleges offer niche programs, for which they are renowned, such as horticulture, animation, aviation and, at Mohawk, medical radiation sciences and advanced design and packaging technology programs.

Colleges provide opportunities and pathways for students from all walks of life and backgrounds. Our



province, like many jurisdictions, is experiencing changing demographics. As we mentioned, baby boomers are retiring and a growing number of sectors face shortages of skilled employees. And while we celebrate newcomers to Canada and strong immigration levels, immigrants alone won't provide the skilled workforce we need. Because we have a strong college system, we have the opportunity to reach that segment of our population that doesn't have that post-secondary credential. We can help many of them improve their knowledge and skills through the applied programs offered at the colleges. We can help them to make a stronger contribution to the workforce and strengthen Ontario's overall productivity.

Ontario is very proud of its college system and college graduates, graduates who help us achieve competitive advantage. This will be even truer in the years to come. To accomplish our mission for the province and our students, it is critical that we get this important legislation correct.

I'll hand it now back to Ronald.

**Mr. Ronald Holgerson:** Thank you, Allan.

Turning to the provisions of Bill 90, a number of colleagues will provide you with an overview of challenges in the bill that we feel must be addressed and concerns we have regarding recently suggested and untested proposals. I will focus on some important positive aspects of the bill, which we believe must be retained.

In our view, Mr. Whitaker wrote a good report, and we encourage the government to remain true to the spirit and intent of his report. Mr. Whitaker recommended that the parties be given more responsibility for collective bargaining by moving to a more traditional model, relying less on third parties to find solutions and putting those most affected in a position where they have more at stake and thus are more prepared to make the tough decisions required to reach agreements on their own.

To do this, Mr. Whitaker proposed that the provisions of the current act which limit access to and the consequences of strike and lockout be eliminated—the deemed strike provision. We feel that this provision is critical, as it means there is much more at stake for parties to a strike and therefore more reason to negotiate a settlement.

Mr. Whitaker also proposed that the parties be allowed to determine the expiry date of their future collective agreements instead of the expiry date being fixed at August 31. This recognizes that collective bargaining may not always be best served by specific fixed dates not established by the parties.

Mr. Whitaker proposed that notice to bargain be reduced to the normal 90-day period prior to the expiry of the collective agreement.

**The Chair (Mrs. Linda Jeffrey):** Sir, excuse me. You have 30 seconds left.

**Mr. Ronald Holgerson:** Okay.

He proposed that normal bargaining tools available to the parties under the Ontario Labour Relations Act should be imported into the CCBA, such as final offer selection, and that parties should reduce their reliance on third party intervention.

Colleges support Mr. Whitaker's recommendations, all of which have been incorporated into Bill 90.

In closing, we are supportive of Bill 90 and strongly recommend that the provisions outlined remain intact and not be amended. We believe the recommendations will make the legislation stronger and improve the learning environment of our students. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you, gentlemen. We appreciate you being here and your delegation.

## COLLEGE STUDENT ALLIANCE

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the College Student Alliance. Good morning. Make yourselves comfortable. When you're ready to begin, if you're both going to speak, if you could say your names for Hansard and the position you hold. You don't have a handout today, do you?

**Mr. Tyler Charlebois:** No.

**The Chair (Mrs. Linda Jeffrey):** When you're ready to begin, you'll have 10 minutes. If you leave us some time at the end, we'll be able to ask questions.

**Mr. Tyler Charlebois:** I'm Tyler Charlebois, the director of advocacy for the College Student Alliance.

**Ms. Jenn Howarth:** And I'm Jennifer Howarth. I'm the president of the College Student Alliance and the president of the Cambrian Students' Administrative Council.

**Mr. Tyler Charlebois:** As I've stated, my name is Tyler Charlebois and I'm the director of advocacy for the College Student Alliance. I'm pleased to be accompanied this morning by our president, Jennifer Howarth. We appreciate the opportunity to present to all of you, members of the Standing Committee on General Government, on the matter of Bill 90, the Colleges Collective Bargaining Act, 2008.

The College Student Alliance is an advocacy and services organization representing over 109,000 full-time college and college/university students across the province, at 16 colleges and 23 campuses.

Before we speak to the specifics of Bill 90, the Colleges Collective Bargaining Act, I want to make it very clear to the members of the committee that the CSA supports all workers within the college system, whether they are full- or part-time, and their right to organize and collectively bargain.

Once the government made the announcement of their intention to recognize the rights of college part-time workers back in August 2007, the CSA and our members sought to be active participants in the review process led by Kevin Whitaker, chair of the College Relations Commission.

In October 2007, I met with Mr. Whitaker to explain our initial concerns around the government's intention, and again in November he met with our entire membership at our general assembly in Cornwall, Ontario. Our immediate concerns were how, would the thousands—5,136, to be exact—of full-time and part-time students working on campus be affected as a result of this bill?



What would it mean for full-time students working less than 15 hours a week on campus to be part of a union? Do they even want to be unionized? What effect would unionization have on the funding of on-campus employment?

Within our membership, we asked ourselves these questions and many others and sought out a legal opinion before we came up with our formal recommendations to Mr. Whitaker. We concluded that students working on campus part-time during the academic year should not be excluded from the collective bargaining act and that they should be placed in a bargaining unit with other support staff workers working part-time on our college campuses.

Our main reason for recommending students' inclusion in the CCBA was that students must be effectively represented during the bargaining process and therefore should have equal opportunity with all other part-time workers on campus. We feared that if students were excluded from the CCBA and from bargaining and organizing with other part-time support staff workers, that once part-time support staff workers were organized and represented, they would ask for those jobs that are currently classified—so the support staff—to be classified—and therefore students who work in the realm of support staff jobs on campus would then not be able to take part in those jobs.

We want to protect student employment on campuses across the province and we felt that this meant having students included in the CCBA and rolled into a bargaining unit with other support staff workers. In Mr. Whitaker's final report to the government, he recommended that the government create two additional bargaining units and that students be included with the part-time support staff workers unit. Bill 90 proposes just that.

I'm now going to turn it over to Ms. Howarth to explain our current apprehension around students being included in the CCBA with part-time support staff workers.

**Ms. Jenn Howarth:** Currently, student employment on campus is funded through tuition set-aside and the Ontario work study program. Colleges are mandated through the student access guarantee to meet the unmet need remaining for OSAP recipients. A lot of times, this unmet need is provided through scholarships and bursaries.

If students are included in a part-time bargaining unit, the fear is that their wages would increase and both the number of students and number of resources would diminish. For the tuition set-aside funds to grow, there must be an increase in enrolment. So currently, if you have 150 students working on campus and their wages must increase, then the number of students will go down, because we don't have the funding to provide them with work on campus.

In 2006-07, the 1,990 students working part-time on campus through tuition set-aside were OSAP recipients, while another 4,585 were non-OSAP recipients. The number of non-OSAP recipients can be related to the individuals who may have come from a middle-class family who are not eligible for OSAP, yet still have unmet needs as a student.

In addition, having student employment on campus provides the opportunity to decrease debt post-graduation, especially for students who are working in jobs upon entering the workforce where they may have lower salaries—for example, early childhood education or personal support workers.

**1020**

For those students working on campus and receiving OSAP, they're faced with the challenge of not earning more than a weekly allowance. Both the Canada and Ontario portions of OSAP allow a student to earn \$50 per week; anything over and above will be clawed back from their OSAP loan.

Colleges also differ from universities in the sense that we create communities within our institutions. That's not saying that universities don't create this atmosphere, it's more so saying that at a college—more so our small and medium-sized colleges—you're not just a number within the institution; you're a name. We'd like to keep that through student employment. A high population of students in the north are from remote communities and reserves across the province. Aboriginal students feel more comfortable working in the college rather than entering this new city and then going to have to work off campus as well.

Mature students have a far better chance at succeeding in their post-secondary ventures—for example, at Cambrian, we have 25% of our population as mature students—if they're eligible to work on campus, as the employers in the college are willing to work around class schedules, tests, exams and assignments, an opportunity that may not exist in the normal workforce.

While working on campus, students are able to put into practice the skills that they have learned in the classroom. The hands-on experience makes our students more knowledgeable post-college, and adds in practical work experience to their resumé, which they may not have if they didn't work on campus—for example, liaison, the registrar's office, marketing, the daycare and many different opportunities in which they can work. At Confederation College in Thunder Bay, they have found that 75% of students who worked on campus through the Ontario work study program graduated, compared to the average college graduation rate of 55%.

I'll turn it back over to Tyler.

**Mr. Tyler Charlebois:** The CSA feels that Bill 90, the Colleges Collective Bargaining Act, 2008, is a vast improvement over the current legislation that we have. Not only does it bring the college system and our collective bargaining more in line with the Ontario Labour Relations Act, but it seeks to right a wrong from decades ago in recognizing the rights of part-time college workers.

In closing, I'd like to state again that we do support Bill 90 and strongly encourage this committee to think about our concerns related to how this bill will affect students, and whether they should or should not be included. We don't feel that that's necessarily our place because there are pros and cons on either side, but we wanted to bring about some of the concerns in some of



the other programs that are government-related and that are going to have an effect as a result of Bill 90—a ripple effect on students and access to our colleges.

We wanted to make sure that students in on-campus employment will be protected. Knowing the positive affects of on-campus employment that Jenn has stated, and the positive benefits that it has with retention and persistence of students, we feel that the program of on-campus employment should continue, whether they're included or excluded from the Colleges Collective Bargaining Act.

As a partner in post-secondary education, we strongly support any measures and means that work to create a positive working and learning environment for all staff and students at Ontario's colleges.

**The Chair (Mrs. Linda Jeffrey):** You've left just under a minute for each party to ask a question, beginning with Mr. Marchese.

**Mr. Rosario Marchese:** Thank you for your presentation. A quick question: I really believe that the college system is very worried about the financial implications that it will have on them. They have been underfunded for a long, long time and for that reason, they're looking at a flexible way of being able to hire certain people. That's why half of the people are part-time: because they need to save money. They're worried that some of the recommendations that OPSEU is making might produce further costs and might not bring the commensurate money from the government. Are you a little bit worried about this, in terms of the implications that it will have on students? Because my sense is that if the government doesn't kick in more money, you guys are going to be paying for it, right, through tuition?

**Mr. Tyler Charlebois:** Yes. We did say that in our report to Kevin Whitaker, and again when we met with the minister after the report came out, that we were concerned that moving this process down the line to extend the rights, although we support it, is going to cost the institutions and the college system a considerable amount of money.

**Mr. Rosario Marchese:** And what did he say?

**The Chair (Mrs. Linda Jeffrey):** I'm sorry, Mr. Marchese—

**Mr. Rosario Marchese:** I beg your pardon. What did he say?

**Mr. Tyler Charlebois:** That they were looking into it, as the process around extending the rights. So we are hoping that the government would go down that road in looking at increasing the investment in the college system—

**The Chair (Mrs. Linda Jeffrey):** A short answer would be better.

**Mr. Tyler Charlebois:** Sorry.

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** No, I understand—don't lead the witness.

From the government side, Mr. Moridi.

**Mr. Reza Moridi:** Thank you very much for your deputation. Given the fact that since 2003, the capital funding for colleges has been increased by 54%, how

would you see the effect of Bill 90 on students in general?

**Mr. Tyler Charlebois:** In general, obviously, we've seen an increase in funding as a result of the Reaching Higher plan. But if you look at the past, before the Reaching Higher plan came in, the college system was so underfunded, and that investment was just starting to bring the college system's head above water in meeting the demands of a quality post-secondary education. We're just starting to reach above, so we've recommended further investment on top of Reaching Higher, that we need to continue to invest.

Related to Bill 90 specifically, which is the pot, Reaching Higher funds do not reach into any of these: They don't reach into tuition set-aside or the Ontario work study program. Those programs were separate from Reaching Higher, so investment there would not increase these pots or these resources.

**The Chair (Mrs. Linda Jeffrey):** Mr. Wilson.

**Mr. Jim Wilson:** Thank you very much for your presentation. I was wondering if you could leave us with the presentation that you've written out, because it's been 30 years since I was in school and I can't take notes as fast as I used to be able to.

Just so I get a better understanding: Generally you're happy with the act; you're included in one of the bargaining units. You mentioned 15 hours a week. Is there a minimum number of hours that a student needs to work to be considered a part-time student?

**Ms. Jenn Howarth:** There is a maximum number of hours. It's up to the student, depending on their course load and other extracurricular activities that they may have in mind. Because of these different types of funding, there are limitations on how much they can work. But it all comes back to the fact that colleges are here for students. That's why we have colleges: because there are students within them. I think it's really important that we realize how important student funding or funding on campus is, or how important employment is on campus, because it's all about retention and keeping those students and making sure that they graduate in the long run. That's definitely something that we have to keep in mind.

**Mr. Jim Wilson:** Okay, and there was just—

**The Chair (Mrs. Linda Jeffrey):** Sorry, we only had a minute.

You've been a very interesting delegation. Thank you very much.

**Mr. Rosario Marchese:** Madam Chair, the college system is big on retraining, so Jim qualifies, right?

**The Chair (Mrs. Linda Jeffrey):** Yes, he qualifies.

#### ORGANIZATION OF PART-TIME AND SESSIONAL EMPLOYEES OF THE COLLEGES OF APPLIED ARTS AND TECHNOLOGY

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the Organization of Part-Time and Sessional Employees of the Colleges of Applied Arts and Technology.



Just for anybody who wants to listen to the delegations, we do have an overflow room next door. If you are crowded and you want a little more space, you can go next door and you'll be able to hear what's happening today.

Thank you for being here. I have two names here. If you're both going to be speaking, please say your names for Hansard so that we have the right individuals. I believe we have a copy of your handout in front of us. You have 10 minutes, when you're ready to begin, after you've introduced yourselves. Welcome.

**Mr. Roger Couvrette:** My name is Roger Couvrette. I'm the president of the Organization of Part-Time and Sessional Employees of the Colleges of Applied Arts and Technology, OPSECAAT, which was founded in November 2006 by OPSEU to fight for the right to bargain collectively for part-time college workers.

Clearly, OPSEU and OPSECAAT believe passionately that there can be and should be improvements to Bill 90. Because of that, we've spent the summer meeting with most members of the committee and with senior officials in the Ministry of Labour and the Ministry of Training, Colleges and Universities to give them plenty of time to weigh the merits of the modifications that we are proposing to Bill 90. The latest version of our brief also includes not only recommendations but the actual language that would be required to change Bill 90 to implement our recommendations. They're all, of course, very good recommendations. There are 16 of them, and I would urge committee members not to fight over who proposes which changes; just share the 16 among you and amend Bill 90 to incorporate these recommendations.

We have decided today to each speak to one point of the 16 in the recommendations, and I'll turn the microphone over to my colleague now to do that.

**Ms. Candy Lindsay:** My name is Candy Lindsay. I'm the vice-president of the Organization of Part-Time and Sessional Employees of the Colleges of Applied Arts and Technology, OPSECAAT.

I would like to talk to you about Bill 90 and modifying bargaining units. It's recommendation number 2 in our joint brief with OPSEU.

If the legislation proceeds as is, with two new part-time bargaining units, it will also make it way too hard to modify bargaining units in the future. It sets weird conditions to modify the units.

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First, the union and the council must come to the OLRB with a joint proposal if the units are to be merged or modified in any way. What's that all about? Why can't the union go to the OLRB with a proposal, the employer can make its position known to the board, and the board can then decide the merits of the application? That's the way it's done with bargaining units governed by the OLRA.

One other thing: Bill 90 says that both of the new part-time bargaining units must be unionized and have a collective agreement in place before any bargaining unit is modified. I have a question in three parts: Why? Who

thought that one up? Who invented that condition for reconfiguring bargaining units?

There are other conditions to modifying bargaining units in Bill 90 that are inappropriate, and they are dealt with in our brief.

I would respectfully recommend to the committee that modifying bargaining units should be a lot less complicated than is presently proposed in Bill 90. Thank you.

**Mr. Roger Couvrette:** At a meeting on August 29, Jim Brownell asked me a very good question. My topic is in fact the last recommendation in our brief, that Bill 90 should include a representation vote. "Why," Jim asked me, "did the legislation not allow part-time and sessional college workers to merge into their full-time counterpart bargaining units?"

I think when Kevin Whitaker recommended two new part-time bargaining units in February 2008, it made sense to go that route, at that time. Just merging the part-timers into the full-time units would have seemed to give OPSEU an unfair advantage. What if other unions wanted to be the bargaining agent for part-time college workers? Moreover, it would have been undemocratic. The desire of these people to belong to OPSEU had not been tested.

But things have changed, and changed a lot. First, other unions, such as the CAW, wrote briefs to Whitaker supporting OPSEU as the bargaining agent for the college part-timers; the OFL also wrote a brief supporting OPSEU; and labour councils made up of a wide variety of unions across the province passed unanimous resolutions supporting OPSEU in its bid to represent part-time and sessional workers. Finally, between October 2007 and early April 2008, thousands and thousands and thousands of part-time college workers, both academic and support, signed OPSEU cards saying that they wanted OPSEU to be their bargaining agent.

When we took these cards to the OLRB, the employer argued that there was no process, no framework in place in the old CCBA to do this card-signing, and so our application for certification ought to be tossed out. The process or framework that we employed was to ask people if they wanted OPSEU as their future bargaining agent, and in astonishing numbers they answered in the affirmative by signing OPSEU membership cards.

In June 2007, the Supreme Court said that the right to bargain collectively is part of the charter. In August 2007, the government announced it would recognize the right of part-time college workers to bargain collectively. It's been over a year now since that announcement. We don't want any more delays. There is no reason for any more legislative or legal delays. The employer will continue to stall and delay in every way possible; that's been the track record to date. Sad, but nevertheless true.

All of the unions are on our side. A large majority of the part-time college workers we approached signed OPSEU cards. That's why we want Bill 90 to include language which would allow OPSEU to trigger a representation vote of part-time and sessional academic workers and to trigger a representation vote of part-time



support workers. That's democracy in action. That's the fair thing to do. It's time. Let part-time workers vote to determine if they want to go to the bargaining table with OPSEU as their bargaining agent.

I am not speaking here to the issue of two versus four bargaining units. Other will speak to that issue, and compellingly. With either scenario, we are asking that a representation vote be included in Bill 90. I am speaking to the issue of expediting a process in a manner that would acknowledge OPSEU's historical relationship to part-time college workers and recognize the support of the labour movement of OPSEU as the bargaining agent for the colleges; and, finally, I am speaking to recognizing, respecting and acting on the commitment to OPSEU of thousands of women and men in colleges and on campuses in communities across Ontario who signed OPSEU cards in the largest membership drive in the history of the province of Ontario.

**The Chair (Mrs. Linda Jeffrey):** You've left about 30 seconds for everybody to say something, so we're going to begin with the government side.

**Mr. Reza Moridi:** Thank you, Ms. Lindsay and Mr. Couvrette, for this thorough presentation.

Ms. Lindsay, you mentioned that it's going to be hard to modify or unify the existing bargaining units, as it was presented in Bill 90, though there are procedures set out in the bill for this unification some time in the future if that becomes the case. Could you please elaborate a little bit more on that?

**Ms. Candy Lindsay:** I'm going to pass that to Roger, if that's okay.

**The Chair (Mrs. Linda Jeffrey):** It's going to have to be a really short answer, please. You're either going to have to shorten your questions or shorten your answers.

**Mr. Roger Couvrette:** A very short answer: It's just a very arcane and complicated process that we really believe ought to be simplified. It needn't be this complex.

**Mr. Jim Wilson:** Thank you for the presentation and congratulations on signing up so many members in terms of, perhaps, future representation. That was done without a legislative framework in place. Do you not think we might be jumping the gun a little bit to allow OPSEU to sort of automatically now, after the bill passes, if it passes, have instant membership? Should we not allow students the opportunity to review the new legislative framework and make their choice then?

**Mr. Roger Couvrette:** We certainly, in asking people if they wished to have OPSEU as their future bargaining agent—we're not jumping any particular gun and certainly the support was quite overwhelming. That there would be an educational process prior to a vote would certainly be a part of a representation vote, an integral part that we would love to participate in and—

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Marchese.

**Mr. Rosario Marchese:** Quickly, because you notice the Chair is very ruthless, I want to thank you, Candy and Roger, for all of your work, and all of the other members of OPSECAAT. I read your report and I read your

arguments around the idea of having two bargaining units and the arguments of fairness, cost, elimination of jurisdictional disputes. I want to ask the colleges, if we get a chance to ask them, why they're opposed to that. I support your motion of allowing OPSEU to trigger a representation vote for part-time and sessional academics and support workers. I think it's fair and reasonable. We hope that government members think so too.

**Mr. Roger Couvrette:** We hope so too. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you for being here today. I thought I was a kinder, gentler Chair, but obviously not.

## SAULT COLLEGE OF APPLIED ARTS AND TECHNOLOGY

**The Chair (Mrs. Linda Jeffrey):** Our next group is the Sault College of Applied Arts and Technology. Good morning.

Could I ask individuals who are going to talk to please go outside so that we give our full attention to the delegation.

Good morning, gentlemen. I have only two names and I see three people, so if you're all going to talk, could you announce who you are for Hansard. If it's just one individual, could you say your name and the organization you speak for. After you've introduced yourself, you'll have 10 minutes; if you leave us some time at the end, we'll be able to ask you some questions about your delegation. I understand we have some speaking notes in front of us.

**Dr. Ron Common:** Good morning. My name is Ron Common. I'm the president of Sault College. With me are Ben Pascuzzi, chair of our board of governors, and Wallace Kenny, who you have already met.

We appreciate the opportunity to present to the standing committee on Bill 90.

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As David Oraziotti well knows—but I don't see him in the room—Sault College is situated in northern Ontario, in the city of Sault Ste. Marie, along the United States border of the state of Michigan. Our college serves over 6,500 students annually and employs 385 full- and part-time staff, so this should tell you that we are a small college. As a result of being small, we don't have economies-of-scale opportunities, so money is very tight for us.

Sault College supports the right of all college employees to associate. If they do choose to associate, we agree with the recommendation for four bargaining units. I personally believe that they should be kept separate. My 30 years' experience in post-secondary education in several provinces tells me that it is a good idea to have four bargaining units. I've worked as an administrator and negotiated collective agreements when they were combined into single units—full and part-time academics and full and part-time staff were in single units—and I've worked in the Ontario jurisdiction, where academics at the university, full and part-time, are kept in separate



units. I have found, personally, that it's much more effective to deal with those units kept separate, because they have common interests in each unit.

When the government announced the appointment of Kevin Whitaker to conduct a review of the Colleges Collective Bargaining Act, the presidents were pleased to participate in the consultations, and we did so in good faith. We believe that Mr. Whitaker produced a good report and was able to achieve a careful balance. We certainly didn't get all of our recommendations in the Whitaker report, in terms of the recommendations that he makes, but it is a good compromise report.

Mr. Whitaker proposed significant reforms that will support the needs of our employees while still encouraging a positive working and learning environment. We would encourage the government to remain true to the intent of Mr. Whitaker's report.

**Mr. Ben Pascuzzi:** As Dr. Common said, I am Ben Pascuzzi, chair of the board of governors.

As a community leader in the north, I can speak to you about the critical role that Sault College plays in our community.

I'm sure you will agree that there are specific challenges in northern Ontario. There are challenges from our geography, our size, the remoteness of where we live and, as Dr. Common mentioned earlier, the fact that we don't have a sufficient population base, either generally or through our student base, to realize a lot of the economies of scale that larger colleges and larger areas can realize.

The college is vital to the economic success of our community. It's an important economic engine. I would add that Sault College is one of the top five largest employers in Sault Ste. Marie and the district of Algoma. So from my perspective from a business background, having come on the board three years ago, Sault College is as much an economic engine, an important part of our economy, as it is an educational institution.

Sault College has been a leader in training people for the necessary skills that employers need to succeed. As you know, the economy is in transition and there has been restructuring taking place in industries such as mining and forestry. In our own community, of course, the steel plant is one of the main engines of our economy, and recently the new owners of the steel plant, Essar Steel, approached the college to take on the large undertaking of apprenticeship training.

Sault College is a major player in our community and has been able to step in and help people with the skills they need to transition into new careers. For example, Sault College is one of the leaders in the province and in fact in all of Canada in terms of the development of wind power as an alternative source of power. We have actually recently erected a wind tower on our own property and have instituted a program of wind power technicians. Brookfield Power, which is a major employer in the area, has also implemented a large wind farm just north of the city.

Being a community in the north, we are continually working to attract and retain students. We face additional

costs simply to attract new students, and once they graduate with the necessary skills and credentials that employers need, it is sometimes a challenge to keep them in the north.

I can tell you from personal experience that the business community recognizes the importance of Sault College and has been very involved in the success of the college, because the business community knows that the work of the college is a prerequisite to its ability to hire and retain qualified and skilled workers, and we are educating and training future leaders in every sector of the economy. This is an important role and we want to be able to continue to develop and offer flexible programming that takes us beyond our traditional ways of delivering education, because we believe that the future of education and the demand for skilled workers in the future will require it.

I'll turn it back to Dr. Common.

**Dr. Ron Common:** There is one issue that is of significant concern to us; that is, OPSEU's proposal regarding employer and successor rights provisions. I believe Linda Franklin already spoke on this issue this morning.

I believe the proposed OPSEU changes would have a significant impact on the way we structure our academic delivery models with private and public sector partners. This proposal from OPSEU was not made to Kevin Whitaker at the time of the consultations on the colleges bargaining act, and thus the presidents really haven't had much of an opportunity for discussion. What OPSEU is now proposing would have a significant impact on us and restrict colleges.

Flexibility is critical for us to deliver programs that are needed in these changing economic times, and to deliver them quickly in order to be responsive. We need the flexibility to enter into agreements with private and public sector partners, as Ben pointed out, like Essar, and the flexibility to respond to the changing needs of students who have lost their jobs and need additional training, like the new government initiative on second careers.

Ben?

**Mr. Ben Pascuzzi:** As board chair and a strong supporter of the college, I know how hard our employees work and how dedicated they are to our success. They're committed to providing quality education that responds to the needs of students, employers and the community. Unfortunately, bills cannot be paid with good intentions.

Although we are grateful as a college for the government's investments in its 2005 Reaching Higher plan, there are significant funding challenges that we are facing across the system. Funding for colleges is not sufficient to enable us to sustain and build upon the programs and services students and employers demand. Several colleges, including our own, are experiencing severe fiscal pressures and may even be facing deficits, in spite of all efforts. I know at Sault College, as a board we mandated the president and his senior staff to bring in a balanced budget, which they did successfully in the spring, and certainly I would not be telling the truth if I



didn't say it wasn't without some pain felt by both the students and the colleges. So we're doing our best to maintain fiscal prudence, but of course, there's only so far that you can stretch those dollars.

This bill will add more pressure. Anyone in business knows—I know from my own experience—that labour costs are always one of your largest, if not the largest, cost that you're facing as an employer. Implementing the bill, though generally a good bill, would put significant pressure on our budgets. We are calling on the government to fund the implementation of the bill, as I'm certain my fellow board members would agree that the cost implications across our system are unsustainable. There's no question the government, in implementing this legislation, will need to recognize and respond to its financial implications. There's simply no room in college budgets generally, and certainly not in ours, to absorb more costs.

As a businessperson, I recognize that the tough decisions that may need to be taken are being taken, but colleges are completely unable to shoulder new costs, and the government must be aware of this in adding new costs to the system. We have made tough decisions in an attempt to balance our books, but there isn't anything left that would allow us to implement this legislation. The bill will have significant implications for our community and our local businesses if colleges are asked to implement the legislation without any financial commitments from the government. I'll just add quickly—and it was a question earlier in the committee—that it only comes from two places, folks: either tuition fees or government funding. So we're going to have to deal with that cost one way or the other.

Dr. Common?

**Dr. Ron Common:** In closing, we're supportive of Bill 90, and we ask the government to remain true to the intent of Mr. Whitaker's recommendations.

The bill should assist in making collective bargaining more responsive to the needs of colleges, our employees and the students we serve, and we ask that the government recognize the financial implications of this bill and assist the college in its implementation. Thank you.

**The Chair (Mrs. Linda Jeffrey):** You've left 27 seconds. You've used your time very well. Thank you very much for being here, gentlemen.

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#### GEORGIAN COLLEGE

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Georgian College. Welcome. Thank you for joining us. I have two names on my list here. If you're both going to be speaking, please say both of your names and the positions you hold at Georgian College. After you've introduced yourselves, you'll have 10 minutes. If you leave us a little time, we'll be able to ask you some questions. I believe your handout is being distributed as I speak.

**Mr. Brian Tamblyn:** My name is Brian Tamblyn. I'm president and CEO of Georgian College.

**Mr. Eric Broger:** My name is Eric Broger. I'm chair of the board of governors.

**Mr. Brian Tamblyn:** We appreciate this opportunity to present to the Standing Committee on General Government on the matter of Bill 90.

As some of you know, Georgian College's main campus is in Barrie, with other campuses located in Orillia, Owen Sound, Collingwood, Midland, Bracebridge and Orangeville. We have a nationally unique University Partnership Centre with some 1,700 full-time degree students, and we are the largest co-operative education college in Canada. In total, we have about 10,000 full-time and 30,000 part-time students.

Georgian College supports the right of all college employees to associate.

We believe that Mr. Whitaker was given a challenging assignment, and although we did not see everything we had proposed during the consultations reflected in the final report, we believe he was able to strike a very careful balance, one which we believe is critical to our overall support of the legislation and to our ability to continue to run effective and efficient organizations that provide excellent education to our students.

In our opinion, Mr. Whitaker also attempted to respect the differences between this sector and others when making his recommendations and realized the unique needs of a post-secondary education environment, where students cannot always learn within conventional structures and systems.

The Whitaker report proposes significant reforms that will support the needs of our employees while encouraging a positive working and learning environment. In retaining this careful balance, being aware of the potential changes that Whitaker did not propose is as important as implementing the changes that he did recommend. Accordingly, we need to pay as much attention to what he did not put in his report, as these decisions also contribute to the balance he has achieved and which is recognized in the current legislation.

The Colleges Collective Bargaining Act is a unique piece of legislation. Unlike general labour relations statutes, which apply to various workplaces, the act governs collective bargaining in a specific sector of the provincial economy. This allows the government to fine-tune the legislation to meet the specific needs of the parties and to recognize that ultimately it is the students who must be supported. To this end, we recommend that the government remain true to the Whitaker report.

This legislation is critical to the ongoing success of publicly funded colleges in Ontario.

As I'm sure you know, from just listening to the other speakers, there are significant financial challenges attached to this bill. It is critical that you understand these implications as well as the labour relations implications inherent in the proposals coming forward both from the colleges and OPSEU. Right now this legislation represents, for the most part, a compromise between the need for change and respect for the most significant issues raised in the consultations from all the partners in



the college system. To make major changes now, outside of the context of this consultation, will undo this careful balance and greatly prejudice Mr. Whitaker's work and the end result.

Moving to the bill itself, we believe there is a need for further clarity in some provisions of Bill 90 to ensure that the wording of the new legislation is consistent with Mr. Whitaker's intent. I will focus my presentation on recommendations which we believe are technical in nature but are important for clarity and ultimately to foster a constructive relationship. The recommendations I will be presenting today are supported by the other 23 publicly funded colleges across Ontario.

To give the parties access to the normal collective bargaining tools, Mr. Whitaker recommended that the Colleges Collective Bargaining Act be changed to allow the colleges to unilaterally implement changes in terms of employment once the parties are in a legal position to strike or lock out, without giving notice of lockout. This would mean that colleges could implement the last offer provided to the union, requiring the union to make a decision about whether or not they would actually strike. In this way, the system cannot be held hostage indefinitely when the parties are in a legal strike position. This is consistent with the model used in the Ontario Labour Relations Act, and I would refer you to page 77 of Whitaker's report. The government has, in section 15 of Bill 90, attempted to implement this recommendation. However, it is important to be clear that clauses 15(1)(a), (b) and (c) are to be read disjunctively in order to accomplish this intent. That can easily be assured by adding an "or" following clause 15(1)(a).

As indicated previously, it is important to respect the provisions of the Colleges Collective Bargaining Act that Mr. Whitaker has not sought to change. I would now like to address one of those areas.

Mr. Whitaker did not recommend that any changes be made to the power of arbitrators hearing grievances in the college sector. One of the unique aspects of the current collective bargaining act has been that arbitrators do not have the jurisdiction to ignore the parties' freely negotiated time limits for filing grievances. Those time limits have been agreed to by the employer and the union in collective bargaining. The parties have negotiated mandatory timelines in their collective agreements that must be respected by a college, the union or an employee when filing a grievance alleging a violation of the collective agreement. This ensures that matters are dealt with expeditiously and effectively. Neither the colleges nor OPSEU requested in their submissions to Whitaker that an arbitrator be given the right to amend these grievance procedure time limits, but the current draft of Bill 90 does provide this authority. This additional arbitral authority has the potential of adding significant costs to collective agreement administration as disputes become more protracted and legal arguments are made concerning whether timelines for filing grievances should be ignored in specific circumstances. As it is currently drafted, this section would empower frivolous griev-

ances, and colleges will be paralyzed by these types of grievances, again potentially at significant financial and labour relations costs. Mr. Whitaker has identified that one of the major problems in the college sector is the parties' overreliance on third party intervention when resolving disputes.

This section of the act clearly increases the parties' reliance on third party intervention, stands in opposition to the intent of the act, and the additional arbitral authority has the potential of adding significant administrative costs to the entire college system. At a time when colleges are already faced with significant operating challenges and are struggling to continue to balance their books, this is not an acceptable outcome for anyone. I am certain that no party to this legislation would want to enhance the ability to pursue frivolous grievances at the expense of important college programs or student resources, but this is the kind of choice that we would be forced to make if new and expensive amendments are added to this bill.

As neither party requested this change, we recommend that subsection 14(16) be deleted from Bill 90. This deletion would allow the bill to remain true to the spirit and intent of Whitaker to require more direct engagement in negotiations. In any event, the provision, as drafted, does not exactly follow the Ontario Labour Relations Act language and includes a double negative, making it ambiguous. If it is to remain in the act, then the last phrase needs to be adjusted to read "and that no party will be substantially prejudiced by the extension."

There is one final point I would like to raise, as it is an issue of grave concern to us, and that is the addition of "related employer" and "successor" provisions.

**The Chair (Mrs. Linda Jeffrey):** I'll just remind you that you have about a minute left.

**Mr. Brian Tamblyn:** Okay. I'll leave some of this, and I'll turn it over to my board chair to make a comment.

**Mr. Eric Broger:** Brian has mentioned the cost implications of this bill and the proposed amendments. I would like to reiterate that point from the perspective of our board. I'm certain that many of you on this committee have spoken with your local college president and board chair and are aware of the financial challenges we face. I cannot overstate the seriousness of this challenge for all of us or the consequences to our local communities and businesses if colleges are asked to shoulder additional costs without additional funds. We've made tough decisions in an attempt to balance our books, but the reality is that there are no funds left, particularly to implement this legislation.

I would be irresponsible as a board chair if I did not tell you today that the government must commit to funding the changes this new legislation will bring about, because in the absence of that funding we will be required to make financial decisions across the college system that will have a profound impact on our communities, our students, and your ability to deliver on your commitment to a highly skilled workforce. Financial



challenges in the Ontario college system already exist, and this bill, if underfunded, will only make a serious situation that much more severe.

**The Chair (Mrs. Linda Jeffrey):** I'm sorry, you've exhausted your time. Thank you very much for being here today.

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#### WORKERS' CENTRE OF THE COMMUNIST PARTY OF CANADA (MARXIST-LENINIST)

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the Workers' Centre of the Communist Party of Canada. Good morning, Mr. Robinson. Is that right; is that you?

**Mr. Steve Rutchinski:** Yes. I'm ready.

**The Chair (Mrs. Linda Jeffrey):** Great. Make yourself comfortable. I believe your handout is being delivered. Please introduce yourself and the organization you speak for, and once you have, you'll have 10 minutes. If you leave us some time, we'll be able to ask questions at the end.

**Mr. Steve Rutchinski:** I'd first just like to make a correction to the agenda here: I represent the Workers' Centre of the Communist Party of Canada (Marxist-Leninist).

My colleague Dave Starbuck, who is a 30-year employee in the college system, is unable to be here today, but I am presenting on behalf of both of us for the Workers' Centre of CPCML.

I'd like to start by saying that the colleges bargaining act of 1975 is the problem that we're addressing here. It explicitly prohibits part-timers and sessionals from exercising their right to unionize and to collective bargaining. That act has been ruled by the International Labour Organization of the United Nations as a contravention of Canada's commitment to the ILO and to international law with respect to labour relations. As well, the decision of the Supreme Court of Canada really calls into question the legality of the existing CCBA. The ILO pointed out that it was the specific exclusion of part-timers and sessional workers that was the problem. In our view, the remedy to that problem didn't call for re-drafting what we have before us now, Bill 90. It could simply have been achieved by striking the handful of clauses that exist in the CCBA of 1975 which prohibit part-time and sessional workers from unionizing and from collective bargaining. Secondly, it requires an increased investment in social funding for these workers, whose wages and working and living conditions are basically sub-Canadian standard as a result of the CCBA of 1975. It requires an investment in social funding to remedy that problem.

I want to address the question of modernizing the CCBA. In our view, besides the changes I just said, there's really nothing that needs to be done with the CCBA. If it needs to be modernized and harmonized with the existing Ontario Labour Relations Act, we don't see any reason why the college employees shouldn't just be

brought under that act, except for the agenda that is contained in Bill 90. We've heard in the Whitaker report, we've heard from the provincial government, and we hear from the colleges today that they need flexibility to be able to deliver their programs and the mandate of the community colleges. I am chief steward for the professional faculties north at the University of Toronto. We have over 100,000 students, and we have about 5,000 employees. We deliver programs the same way, and we're under the Ontario Labour Relations Act. I'm a member of the United Steelworkers. There's not been an argument given, either in the Whitaker report or here, why some special law needs to exist for college workers.

In our view, much of the language of the Labour Relations Act is introduced into the CCBA; however, the Ontario government has chosen to hold onto the CCBA because it's actually using it to interfere in these college workers being able to exercise their rights. They interfere in the same way that the existing CCBA interferes: It prohibits. But now the interference is taking the form, for example, of imposing four—it's using the CCBA revisions to impose a bargaining structure that will achieve the government's aim, instead of simply recognizing that these workers have the right to organize according to how they see fit.

As an example, we have a rationale given for four bargaining units. If anyone takes the time to read the government of Ontario's submission to the International Labour Organization at the United Nations, you will see that they argued that we have to have the CCBA, 1975, as it exists now, because of the complexity of delivering programs; and therefore we need great flexibility and that's why we have to have some 14,000 of our employees living at and making substandard Canadian wages and living and working conditions.

The argument was completely rejected by the International Labour Organization. The rationale that was provided by the Ontario government at the UN was that there's no community of interest between part-timers and full-timers; therefore, they shouldn't be in the same bargaining unit. Kevin Whitaker came along and saved their bacon on this question, because labour practice in Ontario is that there is a community of interest between part-time and full-time, and for the last 10 years, part-timers and full-timers have been integrated into the same bargaining units.

However, there was an objective behind rewriting the CCBA, and that is to achieve exactly what's laid out here: to split these workers into different bargaining units, not to have to put money on the table to remedy the injustice that's been caused, and to leave it to the bargaining table so that every demand of those who have been subject to substandard living and working conditions—and that's not just me speaking; the International Labour Organization said, "Part-time employees," speaking about the Ontario CCBA, "are a particularly vulnerable class of workers. They have an ongoing employment relationship but are treated as second-class workplace citizens in respect of salaries, working conditions and job security." So it's not just me speaking here.



This is why the CCBA is being rewritten to introduce and to continue what we consider an interference in the right of these workers to exercise their right to unionize and to collective bargaining. The CCBA, Bill 90, is a continuation of this interference.

The Ontario government also intervened at the Ontario Labour Relations Board hearing application of OPSEU to represent the part-time workers back in April of this year and quashed that request for a certification vote. To me, if you want to modernize this act, if you want to come in line with the existing Ontario Labour Relations Act, there is a section 11 that says that interference by an employer in determining—to determine the will of the employees as to exercising their right, whether they want to be in a union or not, if that's demonstrated, the OLRB has an option: That option is to certify. They can say that this interference is unlawful.

In my view, with the interference that's been going on with Ontario college workers exercising their rights, the Ontario Labour Relations Board failed to do its duty. This committee has an opportunity to do its duty. It should demand that the certification application either be granted or that a vote be ordered under the Ontario Labour Relations Act. And secondly, it should recommend to the provincial government that adequate funding is there to redress a condition which would not exist for some 14,000 employees were it not for an illegal law in the first place.

**The Chair (Mrs. Linda Jeffrey):** You've left about a minute for each party to ask a question, beginning with Mr. Wilson.

**Mr. Jim Wilson:** Thank you very much. I didn't think I'd ever be quoting the Communist Party of Canada, but you're one of the first in the many, many months that I've been critic to actually figure out that this—you mentioned it several times; I'm just talking about the financial implications of this bill and also Reaching Higher, the \$6.2-billion figure that's thrown around. I'm glad you've talked about that sort of being a rollover number, year over year, and that it's actually not \$6.2 billion in new dollars into the system.

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You've made a point in terms of it being simpler to just strike down certain offending clauses in the current act and allow employees to be rolled into the current bargaining units. It is a bit of a question—a good question. Do you want to elaborate any further on it? Because we really haven't heard the *raison d'être* for this. The minister says that he's not going to talk about how much money this is going to cost, but obviously people want better wages and better working conditions.

**Mr. Steve Rutchinski:** The Ontario government gave its rationale at the ILO, and that rationale was basically not accepted as a reason for why there shouldn't be—why part-timers and sessional workers shouldn't be unionized.

Kevin Whitaker's report addresses it this way: Kevin Whitaker says that there is such a complexity of issues that face the first contract negotiations for these part-

timers and sessionals that, in the interest of stability and of allowing this to be worked out in a rational and harmonious way, it would be better to have four bargaining units, and then, if they wish to have two later or change that bargaining unit structure, it can be applied for later.

First of all, the argument is a spurious one, because there are already partial-load people who are in the existing bargaining units of OPSEU. They're there because in the original act they simply were forgotten, and so they weren't explicitly excluded.

Secondly, the people who are actually going to do the negotiations are the same OPSEU representatives. They're going to be the ones who are working out the contract language and proposing it to their own members, and proposing it to the council. To say that they need a separate bargaining unit to do that makes no sense to me.

**Mr. Jim Wilson:** Thank you. That's very interesting.

**The Chair (Mrs. Linda Jeffrey):** Thank you. I have to have really short answers because our time is over.

Mr. Marchese.

**Mr. Rosario Marchese:** Thank you for your presentation, Mr. Robinson, and your analysis. I wanted you to comment on the issue of successor rights, because OPSEU is recommending changes that would include successor rights. The Liberal government introduced changes that would give successor rights at the elementary and secondary level education system, including the university system, but the colleges are arguing that it should not apply to them. They're arguing, obviously, that if it did, it would bring on greater costs to the system, and they're very concerned about the costs, quite clearly. I wonder whether, if the money was there, they would change their opinion. I don't know, and I'm looking forward to the colleges to respond to that. But if the elementary and secondary panel has successor rights—and universities do—is it not inconsistent, for the Liberals, at least, that they should be putting forth an argument that the successor rights should not apply to the colleges?

**Mr. Steve Rutchinski:** Short answer: Yes, it's completely inconsistent. They should have successor rights.

**Mr. Rosario Marchese:** You can add any comment—

**The Chair (Mrs. Linda Jeffrey):** Thank you. That was a great answer. I like that answer.

For the government side, Mr. Moridi.

**Mr. Reza Moridi:** Thank you, Mr. Robinson, for your presentation. In your presentation, you mentioned the Ontario Labour Relations Act and the current proposed bill. How would you see, in your view, instead of this bill, the Ontario Labour Relations Act would apply to the college system, where we have 24 colleges across the province with over 100 campuses and the various categories of workers, including students?

**Mr. Steve Rutchinski:** Province-wide bargaining isn't unique to colleges. It exists under the Labour Relations Act in Ontario and other sectors as well—construction is an example. So it's not unique to colleges. I don't see the rationale that's given for why there needs



to be a separate act—it fails on me. I don't understand what it is. Much of the language has been broadly consistent with the Ontario Labour Relations Act. The key thing I see is that if the government simply said, "Let the Ontario Labour Relations Act apply," then it could not be at this table today saying, "This is how these negotiations and labour relations are going to organized." It would not be at this table saying, "This is the mandate that we're giving you and it's only within this framework that it can work." That's my understanding of why we're here today.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much. We appreciate your being here today.

**Mr. Steve Rutchinski:** Thank you.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the Ontario Public Service Employees Union. Good morning, gentlemen. I understand that you don't have a handout; is that right?

**Mr. Randy Robinson:** No, our handout is the OPSEU brief, which I believe Trevor has.

**The Chair (Mrs. Linda Jeffrey):** All right. I have only one name here. If you're both going to speak, if you could introduce yourselves and the organization you speak for. After you do, you'll have 10 minutes.

**Mr. Randy Robinson:** I'm here only to say that I am the real Randy Robinson. The previous speaker, if I'm not mistaken, was Mr. Steve Rutchinski.

**The Chair (Mrs. Linda Jeffrey):** Yes, it was.

**Mr. Randy Robinson:** I'm now going to turn the microphone over to Donald Eady, our legislative counsel, to deliver our brief.

**Mr. Don Eady:** Hi. My name is Don Eady. I'm a partner at Paliare Roland. I'm also legal counsel for the Ontario Public Service Employees Union. I'm pleased to be here on behalf of OSPEU President Smokey Thomas, who is unable to attend this important session today, but asked me to pass along greetings to the committee, not only from himself but from First Vice-President and Treasurer Patty Rout and all 120,000 members of OPSEU.

As you know, OPSEU represents over 9,000 faculty members and over 7,000 support staff at the 24 colleges, has been their bargaining agent for at least 30 years and has been involved in bargaining at the colleges for 40 years. We're pleased to be able to make some comments on the government's proposed amendments to the Colleges Collective Bargaining Act.

You have our brief, which sets out in greater detail the concerns that OPSEU has with respect to the bill. We've got specific legislative language, which I took the opportunity to draft, which would support each of the recommendations that we're making to the committee today.

OPSEU is very happy that Minister Milloy and the government have introduced legislation to recognize collective bargaining rights for part-time and sessional

college employees. OPSEU and its members have been asking for those rights for 30 years, and we've been working hand in hand with the part-time and sessional employees of the colleges and OPSECAAT. We're here because, as was pointed out by a previous speaker, OPSEU has filed a certification application for both units with the Ontario Labour Relations Board and has filed thousands and thousands of membership cards. OPSEU wants to see this legislation passed with some changes, but supports the broad thrust of the legislation generally.

The reason why Bill 90 exists, we say, is because OPSEU and part-time and sessional employees of the colleges demanded that they be given access to the same type of collective bargaining regime that exists for almost every other worker in the province. Ontario is the only province that does not recognize the right of part-time college workers to unionize and engage in collective bargaining. They're also the only group of workers in the education sector in Ontario that does not have those rights. University faculty do, school board employees do, but part-time faculty and part-time college support staff workers do not have that right. We say that's discriminatory. It's not a discrimination that's based on race, gender or religion; it's simply as a result of their work status.

If you think about it, a support worker who works 25 hours a week has the right to engage in collective bargaining; if they work less than 24 hours a week, they don't. That's a distinction that makes no sense. In our view, it's clearly contrary to the Canadian Charter of Rights and Freedoms, based on the 2007 BC Health Services decision. We support the end to the discrimination.

From OPSEU's perspective, the difficulty is that Bill 90 removes one type of discrimination and replaces it with several other types. This new discrimination distinguishes full-time and part-time college employees from most other workers who work either in the education sector in Ontario or other public or private sector employees.

The Ontario Labour Relations Act is the basic template for labour relations in Ontario. It makes sense that everybody should be treated the same unless there is some compelling reason why those employees should be treated differently than everybody else. That was the position taken by Kevin Whitaker when he said that the Colleges Collective Bargaining Act should more closely resemble the Ontario Labour Relations Act. There are reasons we say that the CCBA should be different from the OLRA. That's simply because, if you think about it, a community college is not a factory; students are not manufactured goods. The reason that the CCBA exists is to balance the right of working people to take part in collective bargaining and to balance that with the right of students to receive a quality college education.

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Let me talk about some of the areas where there does not seem to be any justification for treating college workers differently than other workers. We say they discriminate in a number of important ways.



First, Bill 90 does not provide a mechanism where the parties—the colleges and the union—can agree to submit collective bargaining issues to voluntary binding arbitration. There doesn't seem to be any reason why this provision was left out of Bill 90, but it was. The Labour Relations Act has that provision so that every other union and every other employer can say, "We don't want a strike or a lockout. We want to go in front of an arbitrator and settle our disputes." So we say that you should enable parties to do that, and this is recommendation 5, which essentially inserts a provision allowing for voluntary binding interest arbitration.

Secondly, under Bill 90, college workers do not have access to first-contract arbitration. So you're setting up a system where the act provides for the very first time for part-time workers to organize. In any other sector, they would be covered under the Ontario Labour Relations Act and would have the ability to go to the labour board and, under certain defined circumstances, get to what's called first-contract arbitration. I just would quote the former Liberal labour minister Bill Wrye, who said, when they introduced first-contract arbitration legislation into the OLRA in 1985, "The government believes that first-contract arbitration is essential." So if it's essential for university workers, if it's essential for steelworkers, if it's essential for autoworkers, it ought to be essential for college workers.

Thirdly—there was some comment about this from previous speakers—under Bill 90 college workers will be denied successor rights and related employer rights. These rights were designed to make meaningful the right to engage in collective bargaining. If every time a company is sold or a part of a business is transferred or there is a reorganization the union loses its bargaining rights, those bargaining rights are effectively meaningless. Successor rights and related employer legislation have existed under the OLRA for decades, and we say that those rights should also be extended to college workers. It's interesting, because the McGuinty government restored successor rights to crown employees. In 2006 they had been taken away by the previous government, the Harris government. So Mr. McGuinty said, "Public employees should have the same rights as employees in the private sector and, as Premier, I will restore successor rights for Ontario government employees." He did that, and OPSEU is obviously grateful for his doing that, but this government needs to be consistent and needs to extend those rights.

There was some talk about these provisions, successor rights and related employer rights, being new and untested. I find that surprising since they've existed, as I said, for decades. School boards are covered by successor and related employer rights, universities are, and most of the private and broader public sector all have those rights. We say that those rights should be extended to college workers as well.

The last type of discrimination that I want to talk to you about is really a situation that we want to try to head off: a waste of taxpayers' dollars and union members'

dues. Under the OLRA, if a group of employers bargain one central collective agreement with a union, there is a provision that—and that's the situation we have here now with full-timers and hopefully we'll have it with part-timers—there is one collective agreement that covers all 24 colleges. So let's say a union files a grievance saying, "The overtime provision means overtime starts at 8 o'clock," and there's a dispute about whether that's 8 a.m. or 8 p.m. I'm trying to keep this very simple—

**The Chair (Mrs. Linda Jeffrey):** You have a minute left to keep it simple.

**Mr. Don Eady:** The Labour Relations Act says that the union files one grievance, they win or lose, and it binds all of the employers. So we say that makes sense, because if one college loses or wins that grievance, it should apply to the others. Right now, the union would have to re-litigate that 23 more times to make the case college by college. That makes no sense. So what we want to do here today is to ensure that the legislation provides the same rights to college employees as it does to employees in the broader public sector and in the private sector. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today.

## DURHAM COLLEGE

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Durham College. Good morning.

**Mr. Don Lovisa:** Good morning.

**The Chair (Mrs. Linda Jeffrey):** Are you going to be the only speaker today or are you both going to speak?

**Mr. Don Lovisa:** I'm going to speak. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Could you identify yourself and the organization you speak for? After you've identified yourself, you'll have 10 minutes. If you leave some time, we'll be able to ask questions. Do you have a handout today?

**Mr. Don Lovisa:** Yes, I do.

**The Chair (Mrs. Linda Jeffrey):** Okay. It's coming around. Great. Thank you.

**Mr. Don Lovisa:** Good morning. My name is Don Lovisa, president of Durham College. I appreciate the opportunity today to present to the Standing Committee on General Government on the matter of Bill 90.

The main campus of Durham College is in Oshawa, Ontario, and is shared with the University of Ontario Institute of Technology. We have a campus in Whitby, and that is the home of our award-winning skills training centre, a campus in Uxbridge, and locations in other areas of Durham region and Northumberland county. Offering approximately 100 full-time programs and hundreds of part-time and continuing education courses, the college has more than 6,300 full-time students, thousands of part-time and almost 1,600 apprentices. Durham College has more than 1,000 employees, including full- and part-time employees.

Before I speak to specific recommendations, let me give you a quick background on how we got here. In



August 2007, the government announced its intention to recognize collective bargaining rights for part-time college workers as part of a broad review of collective bargaining. Kevin Whitaker was appointed to lead this review and advise the Minister of Training, Colleges and Universities of recommended changes to the Colleges Collective Bargaining Act. The government's expressed intent of the review was to provide greater access to collective bargaining for college employees while improving the act to ensure that colleges can fulfill their mandate, to respond to changing needs of the college community and establish and maintain good labour relations.

As changes to the CCBA are of critical interest to my college, we committed to working with the government to develop solutions that were in the best interests of students, staff, faculty, the college and our community that we serve. Colleges Ontario, the advocacy organization representing all 24 publicly funded colleges, made a submission to Kevin Whitaker, and the council of presidents had discussions with Mr. Whitaker. Overall, we believe that Mr. Whitaker wrote a good report and we encourage the government to remain true to that report.

Let me begin by saying that Durham College supports the right of all college employees to associate. While I endorse Mr. Whitaker's recommendations that the current act move toward a classic collective bargaining model similar to that contained in the Ontario Labour Relations Act, there are aspects of Bill 90 which go well beyond the recommendations of Mr. Whitaker's report. By going beyond the scope of Mr. Whitaker's recommendations, I believe the bargaining relationship is harmed. In addition, I feel there is a need for full clarity in some provisions of Bill 90 to ensure that the wording of the new legislation is consistent with Mr. Whitaker's intent.

I will be focusing my presentation on recommendations which I feel enable a fair collective bargaining process. The recommendations I will be presenting today are supported by the other 23 publicly funded colleges across Ontario.

The first item is to adjust the certification model in section 30. We believe that getting the certification model right is critical to the success of the bill. In an effort to assist you in understanding what we are recommending, I will present the evolution of the certification process. Prior to Bill 90, the CCBA included a process that allowed a union to make an application to the Ontario Labour Relations Board to displace OPSEU as a bargaining agent for the two existing full-time bargaining units. An applicant in a displacement application had to satisfy the OLRB that it had the support of at least 35% of the employees in the organization who would be in the bargaining unit prior to the union's taking a vote. This is generally done through the signing of membership cards.

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This statutory provision required that the OLRB check the membership cards signed against employee lists provided by the employer to ensure that at least 35% of

the actual, current employees who would be in the bargaining unit were supportive of the vote. If the union met this threshold, the board would order a vote.

The certification process under the Ontario Labour Relations Act is different. It directs the OLRB to determine if at least 40% of the employees who would be in the appropriate bargaining unit appear to have demonstrated support. If that appearance exists, then a representation vote is held.

In determining whether there is an appearance of 40% support, the OLRB is restricted to considering only the material filed by the applicant. This invariably means that votes are held in most certification applications under the OLRA because the applicant always provides the requisite appearance of support. Employers may challenge whether the 40% threshold has been met, but this only occurs after the vote has taken place, after considering the detailed employee lists filed by the employer. If the union has not met the threshold, then the vote is declared void and the ballots are destroyed.

At page 68 in his report, Mr. Whitaker indicated that the certification process should "require the demonstration of membership support in at least 35% of the bargaining unit, followed by a simple majority of ballots cast in support of the trade union in a province-wide representation vote." In other words, Mr. Whitaker was recommending a process which ensured that a vote would not take place until there was a demonstration of at least 35% support from the members of the notional bargaining unit. This allows appropriate access to collective bargaining but reduces significantly the possibility of unnecessary disruption to the learning environment caused by unnecessary campaigning and voting when it is clear that the vote will not succeed.

The government has not adopted this recommendation but rather has introduced a model similar to that used in the OLRA. If the legislation is passed as currently drafted, certification votes of employees on college campuses are likely to occur before a union has actually demonstrated that they have the threshold support to warrant a full vote. This is not what Mr. Whitaker intended and, most importantly, it is not sensible in an education environment. There are more than 100 campuses within the college operations in Ontario. When a vote is taken, the OLRB normally provides polling stations at all work sites of an employer to ensure adequate access to the polling booth.

When you consider the unique nature of our employees, which include students as well as part-time staff working at all hours of the day and evening to accommodate a range of learning timetables, it will be a significant logistical challenge to coordinate a vote of this magnitude and provide reasonable access to the polling booth when people are actually available to vote.

The way this section is currently drafted, it will be quite disruptive of normal college operations, as all certification processes tend to generate considerable employee interest, both for and against an application, and all employees who are affected by such a change should have the right to vote.



Mr. Whitaker recommended a process that ensures a vote would not take place until there was a demonstration of 35% membership support. This allows appropriate access to collective bargaining but reduces significantly the possibility of unnecessary disruption to the learning environment. In the interest of supporting a positive learning environment for our students, I recommend that the legislation be amended to provide that no certification vote will occur until the labour board is satisfied that the union has 35% membership support. The colleges feel it is inappropriate to require a vote to be held until there is certainty that the threshold has been met and the vote will ultimately be counted.

In the alternative, if the OLRA process is to be included in the legislation, then there is no rational reason why the union should be required to establish a 35% threshold of support in the college sector when in every other sector that threshold is 40%.

**The Chair (Mrs. Linda Jeffrey):** Could I ask you to summarize? You have a minute left.

**Mr. Don Lovisa:** I'd like to just recommend that the CCBA should be consistent with the model by adjusting the 35% to 40%.

The other key issue that I wanted to address is the timing of providing employee lists. When an application for certification is made, an employer is required to provide accurate employee lists to the OLRB. In most cases, in trying to compile these lists, it is very difficult for the colleges to respond in the time frame allotted. When you consider that the colleges hire in eight- to 14-week blocks, it's often very difficult, depending on the time of year, to put together a complete list of employees. Many of those employees, as I indicated earlier, could be students who are in and out of the college system, through either one-year, two-year or three-year programs. And when we refer to subsection 31(3), we are suggesting that we also change the timeline for that particular part of the legislation—we recommend that subsection 31(3) be deleted from the act.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today. We appreciate your deputation.

ONTARIO PUBLIC SERVICE  
EMPLOYEES UNION,  
CAAT ACADEMIC DIVISION

**The Chair (Mrs. Linda Jeffrey):** Our last delegation this morning is the Ontario Public Service Employees Union, full-time faculty division. Good morning. Make yourself comfortable. I know you've been here all morning, but I'm still going to go through my drill. You have to say your name and the organization you speak for. You will have 10 minutes after you've introduced yourself, and if you leave us some time, we'll be able to ask some questions about your deputation. Your handout is being given out right now.

**Ms. Paddy Musson:** My name is Paddy Musson. I have been a proud college professor for 33 years. I am

here today as chair of the college academic division of OPSEU. We represent 9,000 unionized professors, instructors, counsellors and librarians in the 24 community colleges that fall under the Colleges Collective Bargaining Act. Our bargaining unit has a 30-year history of trying to win collective bargaining rights for part-time and sessional workers, so I want to commend the government today for proposing a law that recognizes the bargaining rights for a group of workers who do exactly the same work that we do.

Pleased as we are, there are other aspects of the proposed legislation that we hope you will reconsider. We are asking you to reconsider the elements that are missing from this revision that will help students. The primary task that we're involved in, as faculty, is attending to the needs of students, and we would ask you to consider protections for them.

It is important to consider why the CCBA exists in the first place. Why don't the colleges simply fall under the Labour Relations Act? We think there is one basic reason: The Colleges Collective Bargaining Act takes students' needs into consideration. It protects students. It balances the right of working people to take part in collective bargaining while protecting students to ensure that they receive a quality college education.

Bill 90 removes a number of elements in the existing version of the CCBA whose purpose is to protect students, and we are here to ask that those elements be retained in the new legislation.

The first element is jeopardy. That provision requires the College Relations Commission to determine the point at which the students' year is irreversibly jeopardized by either a strike or a lockout. The commission has an obligation to notify the minister so that he or she can take action to prevent the loss of students' academic year. You might ask, what's so special about colleges that this kind of protection is necessary? I think the answer is quite simple: Our mandate is to make sure that our students are job-ready. That means that our students have to meet standards that are set by professional bodies, set by advisory committees. In our programs, this involves a considerable amount of hands-on learning, simulation labs, workshops, and putting our students into agencies and organizations where a teacher supervises them. We put students into mentoring environments in hospitals, in social agencies and in private industry. We guide our students to work in the real world with real clients.

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In the 40 years that the colleges have been in existence, we have had three strikes by college faculty, and I have played a part in all three. In 1984, the jeopardy provision was declared after a three-week strike, and we were legislated back to work. We returned to work and we devoted ourselves to making up the lost time. Our students graduated with acceptable standards required by industry being achieved. The legislation that was created set up a workload study that set the stage for the following round, and all other matters were sent to binding arbitration before an arbitrator chosen by the government.



As the chair of the bargaining team in 1989, the government warned the union in advance that jeopardy was about to be declared and that back-to-work legislation was ready. The pressure of that announcement and the desire of both parties to have a say in who the arbitrator was pressured both sides to resolve many issues and to send the rest to binding arbitration with a mutually-agreed-upon arbitrator.

In 2006, both sides were aware that they were on the verge of jeopardy and they worked out a deal to settle unresolved issues at arbitration.

Importantly, the jeopardy provision protects the government from being seen to interfere with workers' rights after a three-week strike. At the same time, it ensures protection of our students and, quite frankly, refocuses us to get back to work to do the job.

We are surprised that binding arbitration has been left out of Bill 90. Binding arbitration has helped both sides get the job done in a manner that does not hurt the students. Combined with the removal of the jeopardy provisions, we believe this means that strikes or lockouts that are not settled quickly will only be settled by (a) a work stoppage continuing until the students' year is ruined, or (b) back-to-work legislation that leaves a bad taste in everyone's mouth. In the latter case, the government will either have to write the new collective agreement itself or appoint an arbitrator to rule on it. It makes much more sense to have the arbitration option included in the new legislation from the start.

The deemed strike and lockout provision that has been mentioned to you this morning: The current CCBA contains provisions that require that when a bargaining unit is on strike or locked out, the entire bargaining unit is on strike or locked out. The union cannot strike at one college, and the employer cannot lock out workers at just one college—that's under the original. Further, the colleges cannot pay workers to work during a strike or lockout, with the result that there have been no scabs and none of the terrible tension when a strike is over.

Bill 90 removes these provisions. By doing so, it opens the door to rotating strikes and lockouts, which are antithetical to the principle of province-wide bargaining and province-wide collective agreements. Also, the complexity of bringing all students up to speed following a scattergun work stoppage should not be underestimated. System-wide strikes and lockouts create system-wide pressures to bring about faster resolution of differences. These pressures reduce both the likelihood and the duration of work stoppages.

There is another and perhaps most important problem with eliminating the deemed strike and lockout provisions. This involves the safety of both workers and students. Under the current legislation, the union uses picket lines as a way to communicate with co-workers, students, the employer and the general public. Under Bill 90, however, picket lines will take on a new role: to prevent the entry of scabs into the workplace. This would change the character of the picket lines entirely—and entirely for the worse.

Right now, thousands of students work for the college, mostly in support staff jobs, through various student assistance programs. When these workers are unionized, it is inevitable that some of those attempting to work during a strike or lockout will be students. Picket captains will not be able to differentiate between students who are going to study and use college facilities during a strike and those who are going to work. Conflict—up to and including accidental and intentional violence—is inevitable in such circumstances. We are opposed to the use of scab labour in all work stoppages, but banning of scabs is doubly important on any picket line where young people may be crossing. The mixture of scabs, students and strikers together on the picket line is a volatile mix, and I would ask you to carefully consider this.

Finally, let me address the issue of bargaining units that some of my colleagues have already mentioned to you this morning. It is supported by the support division; it is supported by the OPSEU board; it is supported by OPSECAAT, the organization representing part-time workers. We are all in support of two bargaining units, not four bargaining units in community colleges.

**The Chair (Mrs. Linda Jeffrey):** I'll just let you know that you have one minute left.

**Ms. Paddy Musson:** Yes, thank you.

Obviously, Bill 90's proposal to create two academic and two support units doubles the potential for the number of strikes and lockouts in colleges, but other factors are important too. There have been questions about costs this morning, and doubling the number of strikes goes to the issue of not only financial cost but educational cost as well.

In the existing CCBA, our bargaining unit contains both full- and partial-load workers. Partial-load teachers are those who teach more than a third and up to two-thirds of a full-time load. Our bargaining unit contains full-time and part-time workers. What is being proposed is a mirrored bargaining unit that contains sessional teachers—those who can teach up to two years—and part-time workers. We have seen no reason that you would have two mirrored bargaining units, when having two mirrored bargaining units makes it more difficult for one unit to bargain for fair working conditions than it does for the others. I talk about that unfairness in that the bargaining unit that is proposed would be a bargaining unit made up solely of contract workers, and the ability of the employer to interfere with those workers. Let me give you an example.

**The Chair (Mrs. Linda Jeffrey):** You're going to have to make it a really short example.

**Ms. Paddy Musson:** Okay. The example would be that with contract workers in the colleges—take a part-time worker who teaches up to six hours. That part-time worker shows talent as a bargainer. The employer can interfere by two simple methods: One, you do not renew the contract of that individual, or you give that individual one more hour, moving them out of the part-time unit into the existing unit. Putting them all together increases the likelihood of the same quality of working conditions



that lead to our ability to do our jobs as faculty in the community colleges.

These are the issues I've put before you. Thank you so much.

**The Chair (Mrs. Linda Jeffrey):** Thank you for your passion.

Committee, I would remind you that we're going to take a recess until 1 o'clock. You can leave your papers here, but they will not be secure.

I'll see you at 1 o'clock. We're recessed.

*The committee recessed from 1151 to 1302.*

#### CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS

**The Chair (Mrs. Linda Jeffrey):** Committee, we're going to be resuming the Standing Committee on General Government. We're here today to consider Bill 90, An Act to enact the Colleges Collective Bargaining Act, 2008, to repeal the Colleges Collective Bargaining Act and to make related amendments to other Acts.

Our first deputation this afternoon is the Canadian Association of University Teachers. Welcome. Are you Mr. Turk or Mr. Conlon?

**Dr. James Turk:** No, I'm Turk.

**The Chair (Mrs. Linda Jeffrey):** Okay. I have two names here. Is it just you who's going to be speaking?

**Dr. James Turk:** Yes, that's right.

**The Chair (Mrs. Linda Jeffrey):** Great. Could you state your name, your title and the group that you speak for? After that, you'll have 10 minutes. If you leave some time at the end, we'll be able to ask questions. I'll give you a one-minute warning.

**Dr. James Turk:** Thank you, Chair. My name is James Turk and I'm the executive director of the Canadian Association of University Teachers. We're a national organization that represents more than 65,000 academic staff at 122 universities and colleges across Canada, including virtually all the universities and all the colleges in Ontario. On many of our campuses, our member associations represent academic staff who are both full-time and part-time.

We're particularly pleased to have the opportunity to be with you today to talk about Bill 90. We're very happy that the Ontario government has decided to extend collective bargaining rights to part-time academic and support staff in the college system. Unfortunately, in its current form, Bill 90 has several shortcomings that need to be remedied, and can easily and readily be remedied. I want to address three of those for you today in the time I have and offer some suggestions as to what you might do.

First, and most importantly, from our point of view, the first problem is that Bill 90 creates two bargaining units each for academic staff—full-time and part-time—and two bargaining units each for support staff—full-time and part-time. This provision makes little sense, given that part-time academic and support staff do the same job in the same workplace as their currently union-

ized full-time colleagues. Further, the so-called "full-time" academic unit already includes both full-time and partial-load faculty, and the "part-time" unit, as envisioned in the bill, would include part-time faculty as well as full-time faculty who do not teach full-time for more than 12 months in a 24-month period.

In short, the situation is more complex than simply full-time versus part-time and, in any case, the relationship between full-time and part-time workers in Ontario colleges easily meets the community-of-interest test set by the Ontario Labour Relations Board in determining whether workers ought to be in the same bargaining unit.

I'd like to just draw to your attention one Ontario Labour Relations Board decision made in 1998 because it's right on point for you. It was with respect to the situation at the University of Western Ontario, where the faculty were unionizing and the university administration took the position that full-timers and part-timers did not have a sufficient community of interest and should be in separate bargaining units. The faculty association was asking for all full-timers and part-timers to be in the same bargaining unit. The board set the question that it was going to address as follows:

"Does the unit which the union seeks to represent encompass a group with sufficiently coherent community of interest that they can bargain together on a viable basis without, at the same time, causing serious labour relations problems for the employer?"

The board answered that question in the affirmative by arguing as follows:

"Although the job expectations of the full-time faculty and those of the faculty with limited duties"—that's how they referred to part-timers—"are different, and that the faculty with limited duties are not required or expected to do research and administrative work, they have in common an interest in academic work and scholarship and, to all intents and purposes, together they are distinctive from other categories of university employees in that they are responsible for the academic program which must be completed by the students. There is more that binds the two categories of faculty than separates them."

The Ontario Labour Relations Board then ruled that there should be a single bargaining unit for part-time and full-time academic staff.

Similar positions have been taken by most other labour relations boards across Canada in this kind of circumstance. In 2003, for example, when the Acadia University Faculty Association applied to merge the part-time faculty into the existing full-time bargaining unit, the board of governors of the university objected. After hearing the evidence, the Nova Scotia Labour Relations Board noted:

"From the student perspective, the professorate assigns readings, gives lectures, conducts evaluation of performance in a variety of ways and provides feedback in different forms including final grades. While part-time faculty do not have formal research responsibilities, their teaching of credit courses gives them more in common with full-time faculty than have the librarians and instructors who are in the 'full-time' unit."



The Nova Scotia board went on to say:

"The board is convinced that the part-time instructors at Acadia University do share a community of interests with the academic staff of full-time professors, librarians and instructors/demonstrators. As an initial observation, it is significant to note"—and I think this is really important in terms of the arguments that you will be hearing—"that most bargaining units in unionized work settings encompass a variety of job classifications; indeed, a bargaining unit of simple classification in a complex workplace is highly unusual. [The existing bargaining unit] ... are academic staff involved in the core teaching and research mission of the university in varying roles. Adding a classification of part-time teaching staff to this general academic bargaining unit would, generally, seem far from anomalous."

The Nova Scotia board then ruled that there should be a single bargaining unit of part-time and full-time academic staff.

Decisions such as these by provincial labour boards, including the Ontario board, are directly relevant to the issue of whether there should be one or two bargaining units for academic and support staff at Ontario colleges. The reasoning set out above is directly applicable because part-time and full-time academic staff at Ontario colleges are both employed in the core activity of delivering the academic program which must be completed by the students. In every relevant way, the day-to-day reality of the work carried out by full- and part-time academic staff at Ontario colleges constitutes a coherent community of interest.

In addition, based on our national experience with combined bargaining units—we have substantial experience across the country—we can assure you that there is no basis to fear that bargaining together as one unit would cause serious labour relations problems for the employers. Quite the contrary, it makes for far more efficient and orderly labour relations for both parties.

Bill 90 should set out one bargaining unit for all faculty and one bargaining unit for all support staff.

Our second concern with Bill 90, as currently written, is that it prevents either party from requesting first-contract arbitration. This principle of first-contract arbitration has long been enshrined in the Ontario Labour Relations Act and has been a very useful tool in arriving at first contracts that are fair both to the unionized workers and to the employers. The government has set forth no compelling rationale for the decision to exclude first-contract arbitration from Bill 90, and we call upon the committee to reconsider this provision.

Finally, we're concerned that a grievance settlement at one institution under Bill 90 would not automatically apply to all institutions. This is not a well-thought-out position. The bill defines "employer" as an individual college, although the collective agreement is signed by an employers' organization and the agreement is binding on all employers. The bill fails to include the provision from the Ontario Labour Relations Act that an arbitrator's ruling on a grievance against one employer under an

agreement that is signed by an employers' organization is binding on all employers covered by the agreement. The absence of this provision in Bill 90 means that the union may have to litigate the same grievance 24 times. This is clearly a counterproductive model in the context of the Ontario college system. Why would you not spare the union and the taxpayers of Ontario the time and expense of needless arbitration hearings when the matter can readily be resolved by adding the relevant provision from the Ontario Labour Relations Act?

In conclusion, we want to note the historic nature of Bill 90 and our appreciation to the government of Ontario for righting a long-standing wrong by extending collective bargaining rights to part-time faculty. However, as we hope we've made clear, there are several substantive problems with the bill that the government can easily remedy through straightforward amendments, so that it would become a piece of legislation that works well for faculty, for students, for the colleges and for everyone in Ontario who has a stake in high-quality public education.

Thank you, and I look forward to any questions.

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**The Chair (Mrs. Linda Jeffrey):** You've left about 30 seconds for each party to ask a question—and members, I caution you, that's the question and the answer—beginning with Mr. Marchese.

**Mr. Rosario Marchese:** Thank you, Jim. Quickly, I don't think the government wants to make these changes, the college system doesn't want to make these changes, and they make it very clear that we don't have any money. And they understand this will have financial implications. The colleges are underfunded and they have been for a long, long time. I believe in the reasonable recommendations you make and that others have made, because I think they're reasonable; and I think the government should change them. Do you have an opinion about the—

**Dr. James Turk:** The changes we're recommending would reduce the cost of operating the Ontario college system. Two bargaining units rather than four means for more expeditious labour relations. A grievance matter, if you brought in the provision from the Ontario Labour Relations Act: A decision on one grievance under the agreement signed by all would mean it wouldn't have to be arbitrated 24 times with the cost to the colleges, to the public for repeated arbitration. If cost is the concern, the recommendations that we're making are ones that you should adopt readily.

**The Chair (Mrs. Linda Jeffrey):** Mr. Moridi.

**Mr. Reza Moridi:** Thank you, Mr. Turk, for your deputation. Before asking the question, I would just like to remind you that we have increased the funding for the college system by 54% since our government took office in 2003. Even per capita funding for students has been increased quite dramatically.

My question is, in relation to arbitration and the ruling of arbitration, when the case comes from one particular college and a ruling is made for that particular college, what do you think about the application of that particular



ruling to other colleges and other campuses? As you know, there are 24 colleges and 100 campuses spread all over the province, and some issues might be specific for a certain college or a certain campus, which will not be the case in other campuses. How would you see that, if this ruling is going to be applicable to every campus, every college?

**The Chair (Mrs. Linda Jeffrey):** You have 10 seconds to answer that.

**Dr. James Turk:** A good question. The collective agreement that covers all colleges—if there's a violation of that collective agreement and there's a grievance at college X, presumably the ruling that the arbitrator would give would apply to any other college should they consider violating the agreement in the same way. So in a way, it makes perfect sense. If another college is thinking of or has done the same thing, then one arbitrator's ruling settles the matter for everybody.

**The Chair (Mrs. Linda Jeffrey):** Mr. Wilson.

**Mr. Jim Wilson:** Thank you for your presentation. Just back to money again, briefly: Is it not the government's worry that if there are just two bargaining units rather than four, the part-time faculty, for example, will go in with the full-time unit and then there'll be catch-up on wages and parity and whatever?

**Dr. James Turk:** I can't answer for what the government's concern is. It's certainly our experience across the country that when you have all of the faculty in one unit, the various priorities have to be dealt with in bargaining, instead of having one group and the other and whipsawing and getting into more complex bargaining and extending it. It's just less efficient and ultimately more troublesome than having all of the issues around the academic staff or the support staff dealt with at one table by one group.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today.

#### JEAN-LUC ROY

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Jean-Luc Roy. Good afternoon, Mr. Roy. Are you speaking for a group or just yourself?

**Mr. Jean-Luc Roy:** For myself and part-timers.

**The Chair (Mrs. Linda Jeffrey):** Just as a preamble, if you could say your name for Hansard and if you are speaking on behalf of any groups. After you've identified yourself, you'll have 10 minutes. If you leave us any time at the end after your deputation, we'll be happy to ask questions. Do you have a handout today?

**Mr. Jean-Luc Roy:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Okay, great. We'll get it while you're speaking, then. The floor is yours.

**Mr. Jean-Luc Roy:** Thank you, Madam Chair and committee members. My name is J.L. Roy, and I'm a part-time faculty member at Collège Boréal and was the lead organizer for Collège Boréal and Northern College during our campaign. I wanted to bring a voice from the

north, from northern Ontario, and specifically for the part-timers from our area.

I would like to add that I am also a full-time correctional officer with the Ministry of Community Safety and Correctional Services, and I've also been a proud member of OPSEU since 1994.

We ran a highly successful card-signing drive at Boréal and Northern, and in fact we had overwhelming support, as hundreds of part-timers at Boréal and Northern signed OPSEU union cards. There was no question of what part-timers were telling us: They wanted to be unionized, and they wanted OPSEU to represent them.

Because we achieved such a high number of signed cards and the vast majority of Boréal and Northern part-timers had clearly demonstrated they were ready for a certification vote, OPSEU asked me to help out with other larger colleges such as La Cité collégiale, Centennial, George Brown and Seneca. I met hundreds of part-timers at these colleges and yet again the message was clear: They wanted OPSEU to represent them and they wanted to vote sooner rather than later.

By now, you have heard that the OLRB refused to give us a certification vote, but chose to keep our signed cards active; for that, we are grateful. But I can tell you that part-timers are patiently waiting to vote and join OPSEU.

I do have some concerns regarding Bill 90. I have concerns about the impact of creating two new bargaining units. I am in favour of having part-time faculty join full-time faculty, and part-time support joining the full-time support bargaining units. This was supported by the union and by the executive board.

Another concern I have is that Bill 90 eliminates the rule in the CCBA when a strike or lockout occurs; every employee in that bargaining unit is legally deemed on strike or is locked out. So I'd like to see some changes that OPSEU proposes, specifically to amend the schedules in Bill 90 to include part-timers and sessionals in the existing bargaining units upon certification. I also hope that the committee can take a look at amending Bill 90 to retain the deemed strike or lockout provisions included in sections 59(2) and 63(3) of the current CCBA; and amending section 26(1) of Bill 90 to permit either the council or the bargaining agent or a trade union that is applying for certification as the bargaining agent for a group of college employees to apply to the OLRB to change, establish or eliminate bargaining units.

Part-time staff are looking forward to getting paid for all their hours of preparation. They are looking forward to getting paid for training, for meetings with students and staff, just like all of their full-time counterparts.

While organizing part-timers, I noticed a difference in partial-load hours. At Boréal, management tried to avoid having part-time faculty in this category. At Northern College, I met several part-time faculty who were working as partial-load. These inconsistencies seemed to be present across the college system.

When I explain to people who are employed outside of the college system that college part-timers are not



unionized and in fact have been banned from joining a union since 1975, they are shocked: How could that be? They are especially shocked when they learn that the college full-timers are OPSEU members. Why the double standard, and why has it been in effect since the 1970s?

College part-timers have been discriminated against for far too long and I think all of us can agree that the Supreme Court's decision of 2007 was a major victory to right a historical wrong.

Part-timers are tired of being discriminated against and listening to all the excuses and legal delays. Part-timers want action. They want to move on to a vote, and they want to vote now. It is my hope that some changes can be made to Bill 90 that will prevent further discrimination to college part-timers. In the end, as a part-time college member, I can tell you that what I want is fairness and justice for all part-time staff of the 24 community colleges in Ontario.

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I hope the committee will look at some of OPSEU's recommendations. Thank you very much.

**The Chair (Mrs. Linda Jeffrey):** Thank you. You've left about a minute and a half for each party to ask questions. The first speaker will be from the government side, Mr. Moridi.

**Mr. Reza Moridi:** Thank you, Mr. Roy, for your presentation. With regard to the point of having four bargaining units, two for full-time staff and faculty and two for part-time staff, given the nature of the college system and part-time workers who might be teaching academics two or three hours per week and coming from various backgrounds—for these part-time faculty, teaching is their second job. Generally, it's not their main job. My question is: How would you see that? If you combined these together, part-time and full-time faculty, in one bargaining unit, given the fact that they come from different perspectives, how would this fit within the college system?

**Mr. Jean-Luc Roy:** On your comment about part-timers wanting to remain part-timers because they have a secondary job, I can tell you from experience, being a part-timer, that a lot of part-timers I talk to would like a full-time job and they would like to remain with the college system. With regard to the bargaining units, all I can say on that is with the hundreds and hundreds of part-timers I've signed up at Boréal, Northern and all the other colleges, part-timers want to be with their full-time counterparts. That's all I can say about the bargaining units. They want to remain with the full-timers.

**Mr. Reza Moridi:** Thank you.

**Mr. Jim Wilson:** Thank you for your presentation. A number of the points have been made before, but repetition helps when you're dealing with politicians, I can tell you that, and I'm one. I'm just wondering, through you, Madam Chair, if we could get the definition of full-time and part-time under the existing acts and whether that changes. Maybe we'd ask research to do that.

**The Chair (Mrs. Linda Jeffrey):** Yes.

**Mr. Jim Wilson:** I have a feeling there's a fine line between some people working part-time and some people working full-time. It might be the difference of an hour or something.

**The Chair (Mrs. Linda Jeffrey):** Okay. Is that the question?

**Mr. Jim Wilson:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Okay. Mr. Marchese.

**Mr. Rosario Marchese:** Thank you, Jean-Luc. Just a few comments: The parliamentary assistant and the minister constantly talk about how much money they're putting into the system. We thank them for putting extra money, but the reality is we're still number 10 in terms of per-capita funding. The college system has been suffering a great deal—I was about to say a lot more than the university sector, but it's not a competition between who's losing more than the other. You've both been suffering, by way of cutbacks. To be number 10 in Canada is not a matter of pride, so I'm a bit saddened by the constant refrain about how much money they're putting in when we hear the college faculty saying, "We're underfunded."

One of the points you made is you'd like to have two unions rather than four, and you made it clear. Mr. Turk came before you, and he made reference to a number of board conclusions that say there's a sufficiently coherent community of interest. A number of boards across Canada have ruled there is a community of interest in spite of what some Liberal members might want us to believe. You believe that too because you're saying you want to be part of the union. You're saying most of your members want to be part of one union.

I think the government knows that. I believe they want to make bargaining difficult, and they want to make sure it's slow so that the payment doesn't go out as fast as it might. That's what I believe is happening here politically. That's why I am against what the government is doing. Why do you think they're doing this?

**Mr. Jean-Luc Roy:** Like you say, there are some delays. We heard from the college presidents about funding, but they're certainly not talking about their own salaries. A lot of our part-timers are suffering and we want to improve things for the part-timers. I feel that the best way, from what I've been hearing out at various colleges, is that we want to join up with OPSEU, with the existing units. We want to join up with our full-time counterparts.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Mr. Roy, for coming today.

DONALD FRASER

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Donald Fraser. Good afternoon.

**Mr. Donald Fraser:** Thank you, Madam Chair.

**The Chair (Mrs. Linda Jeffrey):** I just have to do my preamble. We welcome you. Could you say your name for Hansard? If you are speaking for an organization, could you mention who they are? If not, after you have



introduced yourself, you will have 10 minutes. If you leave us some time at the end, we'll be able to ask questions. I have the timer; I'll give you a one-minute warning.

**Mr. Donald Fraser:** My name is Donald Fraser and I am the president of the Hamilton and District Labour Council, representing over 40,000 affiliate members in the Hamilton area, including the full-time staff at Mohawk College in both of the bargaining units at present. I have been a part-time instructor at Mohawk College in continuing education for over 10 years. I have been the coordinator for the labour studies certificate program at Mohawk College since January 2000. As such, I wear many hats.

My background is that I am a steelworker out of Stelco in Hamilton. I have negotiated a number of contracts from the unionized side over the years—and been on strike three times at Stelco, so I know what it's like to be on strike—and I have negotiated contracts as an employer, because when you wear the hat of a president of a local union, president of a labour council or treasurer of a local union and you have employees who are unionized, you have to take on those responsibilities also. So I've seen things from both sides, and I have a broad perspective on the issues of the unionization of the part-timers at the college.

My background in the college system is continuing education, that program that's out there, that section of the college that everybody forgets about. Our role through continuing education is to help prepare people, mainly already working, who are trying to better themselves, who are trying to formalize their education or nowadays trying to prepare themselves as if their jobs won't be there tomorrow. As such, I've got five certificates from Mohawk College through continuing education over the 25 years that I've taken courses there, and I still take courses at Mohawk College through continuing education.

In 1989, I taught my first course under continuing education. The first question I asked was, "Where do I join the union?" I was told, "There is no union to join," and I never really pursued it. Then, in the 2000s, a number of us instructors through labour studies had some health and safety concerns. We said, "Where's our representation for the part-timers on the joint health and safety committee?" "You don't have any representation." I think that's a shame that there are thousands of part-time workers out there in the college system who have no representation, as required under the Occupational Health and Safety Act, on the joint health and safety committees.

Then we looked at how we could get unionized as a bunch of labour studies instructors. And then I found out that it's illegal for part-timers to become unionized, and that's where my interest in this whole organization of part-timers began.

There are four points I want to make to you. The issue of two or four bargaining units: I strongly believe in one bargaining unit for support staff and one bargaining unit for the academic staff. It's very clear—and it's the position of the labour movement in Ontario—that OPSEU is

the union that's organizing the part-timers in the colleges. That was adopted at the last Ontario Federation of Labour convention, and a number of labour councils passed resolutions to that effect. Every union in Ontario has respected that decision. It reduces the bureaucracy within the college and the union. The more bargaining units that you have, quite frankly, the more bureaucracy there is, the more negotiations there are, the more—I hope there are no lawyers in the room—the lawyers make money from representing—did I offend any lawyers? Sorry.

**Mr. Jim Wilson:** There's one right behind you.

**Mr. Donald Fraser:** Whoops—the more that lawyers make money through those types of conflicts. It reduces the potential for conflicts between part-time and full-time, but more importantly, it reduces the number of collective bargaining processes taking place and the number of potential strikes that may be there.

1330

I just want to take you back to what just happened about 10 days ago within the college system, when the support staff—it was coming down to the crunch in negotiations. If you had been following, the students were worried, the parents of the students were worried, other people working in the college system were worried, about what was going on. I personally cancelled eight courses that were going to start in the first week of September through the labour studies program because I wasn't going to take a chance that if they went on strike, anybody taking any of my courses would be asked to cross a picket line to further their education. I know that in the Hamilton area, any unionized apprentice who may have been taking training at Mohawk was put on notice to respect the picket lines. Every construction company doing any work at Mohawk College, if they were unionized, was put on notice by the building trades that their members weren't going to cross a picket line.

So if you reduce the number of bargaining units, you reduce the potential for conflict through the system.

The other thing is, it gives stability to the bargaining unit. I have seen a bargaining unit at McMaster University representing sessional instructors, and in the last two and a half years, they've had four presidents of that bargaining unit, because as soon as somebody becomes president they either move on or they move up to full-time or whatever. It's like a revolving door. So if you've got one bargaining unit, it's going to increase the stability.

The other thing is, there's a pool of expertise already there in the full-time bargaining unit for those part-timers to fall back on when it comes to negotiations, grievance procedures etc.

First-contract arbitration: I strongly support the addition of first-contract arbitration if requested after serious negotiations. It's no secret that some employers drag out negotiations, especially with the first contract, quite frankly, to piss the members off in that bargaining unit. Why do we have a union if you can't negotiate a contract? If the threat isn't there of first-contract arbitration, then a lot of times what happens is that it leads to more



conflict when we're talking about negotiations and that. As an example, we've already heard that some colleges can't even come up with a list of who the part-timers are at the moment within their own organization. If that's what we're dependent on to be serious bargainers at the negotiating table, then I think some colleges are having serious problems.

**Successor rights:** Again, I strongly support the addition of successor rights. It helps eliminate privatization as a labour relations tactic when they know that the people in the contract are going to go with the job. When you privatize it, it eliminates that as a threat or as a weapon. Because in my experience, when jobs are privatized, it's only done for one reason: to get out of a collective agreement and use it to reduce wages and benefits. Then, those workers have to start over from square one, being unionized.

The applications for certifications should proceed. I have signed an OPSEU card. I strongly believe that Bill 90 should contain provisions for automatic certification if more than 50% of the proposed bargaining unit have signed appropriate cards, and the cards that have been signed should be honoured. My signature is on this brief. My signature is on an OPSEU card. Why isn't my signature worth anything in the real world? There was a change a number of years ago to the Ontario Labour Relations Act—and I know that collective bargaining in the college system is under a different piece of legislation—that took that right away from workers. If OPSEU can sign up 50% or 55% of the people who indicate, by their signature, that they want to belong to a union, I think that should be respected during the collective bargaining process, and that should be put into Bill 90. When the building trades were given that right, part of the argument there was that there's a lot of movement within the building trades. Well, we've already heard that within the college system.

The other point I just want to go back on is the bargaining units.

**The Chair (Mrs. Linda Jeffrey):** You have 30 seconds.

**Mr. Donald Fraser:** When I go into registration, to register people, or I go into the continuing ed office, dependent on the time of day, I may get a full-timer to answer my questions and register me or I may get a part-timer, because they're doing the same work a lot of times, in the same offices, sitting side by side at the same desks, same cubicles, whatever.

Thank you. I would respond to any questions.

**The Chair (Mrs. Linda Jeffrey):** You've exhausted your time. Thank you, Mr. Fraser. It was a great delegation.

ONTARIO PUBLIC SERVICE  
EMPLOYEES UNION,  
CAAT SUPPORT DIVISION

**The Chair (Mrs. Linda Jeffrey):** Our next speaker will be the Ontario Public Service Employees Union sup-

port staff divisional executive, Betty Cree. Are you both speaking today or just one of you?

**Ms Betty Cree:** I have asked Rod, who's the chair of the bargaining team, to be here just in case there are questions. He'll perhaps be able to answer some of the bargaining questions.

**The Chair (Mrs. Linda Jeffrey):** So maybe what I could ask you to do is introduce yourself, the organization you speak for and also your counterpart. After that you'll have 10 minutes. If we get to that point at the end where there's time to ask questions, you can both speak. Welcome.

**Ms Betty Cree:** I'll start with Rod Bemister. Rod is the chair of the bargaining team for support staff of the 24 community colleges in Ontario.

My name is Betty Cree. I have been a full-time support staff worker at Fleming College in Peterborough for 20 years. I was a part-time support staff worker for three years previous to that. I'm also the president of OPSEU Local 351.

As chair of the college support division of OPSEU, I'm pleased to be here today to speak on behalf of the more than 7,000 full-time college support workers at the 24 colleges across Ontario.

To name a few job classifications, as support staff, we are clerks and secretaries, we are the technicians and the technologists, equipment operators, we're the trades and facility workers, we are the financial aid officers and the registrars' clerks, and in many areas we are directly involved in teaching the students. In a word, we are the infrastructure of each college.

I don't have to tell you that for the majority of our students, 18 and 19 years of age, going to college is the first time that they'll really have to function on their own in the adult world, and they do need a lot of support in order to succeed in their studies. We provide that support in a thousand different ways and we are proud to do it.

With us today, of course, we have copies of our brief from OPSEU, and I hope you will give serious consideration to all 16 of our recommendations for improvements to Bill 90. However, in the limited time I do have, I just want to speak about one issue, and that is the issue of bargaining unit configuration.

As you know, the Colleges Collective Bargaining Act, known as the CCBA, currently recognizes the rights of full-time academic staff and full-time support staff to take part in collective bargaining. It also recognizes the right for a group of academic part-timers who are known as partial-load. These people teach from seven to 12 hours per week. Finally, it recognizes support staff who work on a casual or temporary basis in order to backfill full-time bargaining unit employees and students who work during the May-to-August period. All other workers are excluded from collective bargaining, and this is the problem that Bill 90 will solve.

I want to say up front that we applaud this government for moving to recognize collective bargaining rights for all part-time and sessional workers. This truly is an historic change. Part-time workers have been waiting a



long time for this opportunity and they are anxious to begin collective bargaining as soon as possible. But we fear very strongly that they will be hampered in achieving the promise of collective bargaining if they are segregated into bargaining units that separate them from their full-time colleagues. We believe that the bargaining units, as proposed in Bill 90, are unfair to part-timers.

Speaking for support staff, I want to explain these part-time workers and who they are. They are in no way different from full-time workers as far as the work that they do. They do exactly the same work that we perform. We work literally side by side. As a matter of fact, in many cases, we've worked side by side with them for a decade or more. For the support jobs that they are required to perform, these part-timers are required to have exactly the same level of skills, experience and qualifications as full-timers in order to do this work. But full-timers earn a union wage with negotiated benefits, they earn vacation entitlements, they get job security protections and a pension plan. Part-timers, on the other hand, earn wages that are, in most cases, lower, and work without benefits for themselves or their families. They may have no vacation even if they work 12 months straight in a row and they have absolutely no real job security. Some of them may be enrolled in our pension plan, but many are not. This is either because they've not been told by their employer that they can enrol or because they simply can't afford to enrol because of their lower wages and shorter hours.

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Part-timers receive this unequal treatment for one reason only, and that is that they are part-time, working 24 hours a week. That is the guideline under support staff workers. As a union, we make absolutely no bones about the fact that our goal for part-timers is to have them achieve parity with their full-time colleagues as soon as possible. That is what they want, that is what they deserve and that is what is absolutely fair.

Segregating part-timers in their own bargaining unit maintains the fiction that these workers are somehow fundamentally different from their full-time colleagues. Ladies and gentlemen, they are not. They are the same and they should be in the same bargaining units. It's important to note that part-time support staff jobs have been created in colleges specifically because they are cheaper, not because there's only enough work to do it in 24 hours.

I think it is important that we consider what will happen when part-timers attempt to bargain language that allows them to convert to full-time positions. As this has an impact on the full-time bargaining unit, it's entirely possible that the employer will have to negotiate with both bargaining units in order for this to happen. It would make a lot more sense if such negotiations all took place at one table and not two.

The full-time collective agreement for college support staff already contains provisions for part-timers who enter our bargaining unit. Their part-time hours count for calculating their seniority date once they are in there and

if they have been performing work of a similar nature, they can have their probation period decreased. So you can see that part-timers are already linked to full-timers to some degree. But with two separate bargaining units, it is inevitable that jurisdictional disputes will arise. These can be avoided by having part-timers and full-timers together right from the start.

As you've been hearing today, there is a lot of concern about cost when this kind of legislation is passed. I think it's important that you all consider the cost of negotiations for both the union and the employer, as a matter of fact, because negotiation costs include bargaining team transportation, meeting room rentals, hotel costs, meals, communications costs and support from professional negotiations staff. Negotiations can also take months and they are certainly not cheap. With two bargaining units, the cost of these negotiations is double for the union membership and double for the Ontario taxpayer. So, as a start, why not save your money and have them all in one bargaining unit?

So far, we've heard absolutely no explanation from the drafters of Bill 90 as to why it makes sense to segregate the part-timers from the full-timers. There are, however, many good reasons why they should be integrated into the same bargaining unit. Ladies and gentlemen, a community of spirit does exist among part-time and full-time workers that is sufficiently strong to warrant their inclusion in a single bargaining unit.

It is the position of the OPSEU college support division and the OPSEU executive board that our bargaining unit should include all full-time, all regularly-scheduled part-time, all casual and all seasonal employees of the colleges that perform support staff work.

Thank you for taking the time to listen to me, and I'll take any questions.

**The Chair (Mrs. Linda Jeffrey):** You've left about 45 seconds for each party to ask a question, beginning with Mr. Marchese.

**Mr. Rosario Marchese:** Thank you, Betty. I think the arguments you're all making in this regard are very reasonable, and I think the government understands that, because it's not that complicated. So my point is they don't want to have two bargaining units, and I'd like to ask the colleges, if I could get an opportunity to ask them, why it is that they don't support two, which seems to be as rational for them too. But they don't seem to support two bargaining units. I haven't been able to ask the colleges that. If they leave some time, I want to ask them.

For me it's clear: You're all saying you want to be part of two bargaining units. Why wouldn't the government listen to that? That's what I'm not understanding.

**Ms. Betty Cree:** I guess I have that question too. It's important, I think, for the government—I don't know why the government wants to basically double their work on everything, double their costs. As I said earlier in my brief presentation, it will cost the taxpayer money and the union membership too. It just makes sense, particularly speaking for the support staff group, that when you have



a group of people who are really one and the same in the work that they do, they should be together.

**The Chair (Mrs. Linda Jeffrey):** Mr. Moridi.

**Mr. Reza Moridi:** Thank you, Ms. Cree, for your deputation. I have sympathy for your presentation and also Mr. Fraser's presentation in relation to the delay and many years that part-timers didn't have the right to unionize. I would like to recall that in 1992 there was a bill at the Parliament which wasn't called for third reading, and if that bill had been called for third reading, now we could have had this right given to the part-timers in our college system for the past 16 years. That was just a comment.

But in relation to your comment about why we don't have two units rather than four units, if the reconfiguration of bargaining units were given a provision in the bill, what would you think about that?

**Ms. Betty Cree:** Yes, but that would be down the road. Is that what you're talking about—

**Mr. Reza Moridi:** Yes, this is down the road.

**Ms. Betty Cree:** —that there's that possibility, and what I think of that?

**Mr. Reza Moridi:** Yes.

**Ms. Betty Cree:** To be blunt, I really don't think that you're going to get much co-operation from the colleges.

**The Chair (Mrs. Linda Jeffrey):** Mr. Wilson.

**Mr. Jim Wilson:** Thank you, Ms. Cree, for your presentation. I'm just looking back at what Kevin Whitaker said about this—because I'm with Mr. Marchese and yourselves in terms of four versus two bargaining units—because of the historic mumbo-jumbo of terms and conditions and pay for part-time workers right now that I think he talks about and the complexity of the issues, that it would be best to set up two new separate bargaining units, for the time being anyway. Did you have a chance to read that part of the report, and do you have any further comment on that?

**Ms. Betty Cree:** About Mr. Whitaker's?

**Mr. Jim Wilson:** Yes.

**Ms. Betty Cree:** Yes, I've read the report—quite a while back, actually, so you're testing my memory—but I don't feel that his explanation was sufficient enough to convince me as to why the two versus the four. For some reason, again, he did throw in the fact that there could be a different configuration down the road to give this a trial at the start. But our group has been steadfast in our position as far as having a single unit for support staff, and it has also been different than what Mr. Whitaker has laid out in his brief.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much. Thank you for coming today.

#### CANADORE COLLEGE

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Canadore College. Welcome. Is it just you today?

**Ms. Barbara Taylor:** It's just me today, yes.

**The Chair (Mrs. Linda Jeffrey):** Okay. I have two people listed here. Are you Barbara Taylor?

**Ms. Barbara Taylor:** I'm Barbara Taylor, yes.

**The Chair (Mrs. Linda Jeffrey):** Great, welcome. If you could state your name for the record and the organization you represent, and after you've done that you will have 10 minutes. If you leave some time, we'll be able to ask questions. Your deputation material is being handed out now.

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**Ms. Barbara Taylor:** Thank you very much. Good afternoon. My name is Barbara Taylor and I am the president of Canadore College. I'm very glad to have the opportunity to be here today to speak to you, the standing committee, on the matter of Bill 90. Our board chair, Colin Vickers, wanted to be here today, he was scheduled to join me, but an urgent family matter has prevented him from coming to Toronto.

I'll just give you a bit of background on who we are at Canadore College. We serve the districts of Nipissing and Parry Sound in northeastern Ontario. We have an annual enrolment of approximately 3,500 students. We have three campuses in North Bay, including a shared one with Nipissing University, and three satellite operations in the smaller communities of West Nipissing, Parry Sound and Mattawa. We offer more than 85 programs ranging from aviation through to a whole range of other areas. We offer quite a large number of skilled trades programs and a variety of apprenticeship options. We have a sound reputation for our aboriginal programs and services. In fact, aboriginal students make up over 10% of our full-time enrolment, and that's a student population that is growing. The college is also recognized for its outstanding special needs department.

Canadore College supports the right of all college employees to associate.

I'm sure you will agree that colleges play a critical role in the success of our communities. I can certainly tell you that our college is critical to the social, cultural and economic sustainability of northeastern Ontario. Community colleges across Ontario are responsive to the changing needs of the economy and are preparing students for the workforce. In our region, we're also a major player in the local economy. We are the seventh-largest employer in the city of North Bay, and a recent study shows that we have an economic impact of approximately \$67 million in our region, which, with the projects under way, will grow to \$100 million in approximately five years.

We're important to industry, and we supply employers with well-trained people who are ready to work. As an example, just recently we received generous six-figure donations from two local mining services and supply companies for our new library because we had worked with them to schedule both our diploma and our apprenticeship machinist programming to fit with their production schedules. Mining services companies are booming in North Bay and virtually 100% of their machinists are Canadore College graduates, either through apprenticeship or diploma programming.



Our ability to provide relevant programs of high quality helps our region to stem youth out-migration and in fact is a draw to a significant number of students who move to the region to attend our college.

I can tell you from personal experience that the business community recognizes our importance and has been instrumental to our success. That's because they know the work of the college is a prerequisite to their ability to hire and retain qualified, skilled workers.

We are educating and training future leaders in every sector of the economy. This is an important role, and we want to be able to continue to develop and offer flexible programming that takes us beyond our traditional ways of delivering education because we believe the future of education and the demand for skilled workers in the future will require it.

OPSEU's proposed changes threaten our ability to be flexible at a time when it is most needed. One of my colleagues will have spoken to you about some of the proposed amendments recommended by OPSEU. I will be speaking to you about our response to a few more of OPSEU's proposed changes. We feel it is very important to help you understand the implications of OPSEU's changes and where we stand on their proposals. The recommendations I will be presenting today are supported by the other 23 publicly funded colleges across Ontario.

OPSEU, in its brief on Bill 90, has proposed that the "deemed strike" provision that was in the old act be put back in Bill 90, even though the Whitaker report clearly recommended removing it, and Bill 90 does just that. The old CCBA states: "Where the employee organization gives notice of a lawful strike, all employees in the bargaining unit concerned shall be deemed to be taking part in the strike from the date on which the strike is to commence, as set out in the written notice, to the date on which the employee organization gives written notice to the council and the employer that the strike is ended, and no employee shall be paid salary or benefits during such period." This means that everybody is essentially on strike regardless of whether they want to work or not, since we can't pay them.

Bill 90 eliminates this section so people can cross picket lines and work, or the union could initiate rotating strikes. This is important as it goes to the principle that the normal pressures and consequences of collective bargaining should be allowed to influence the parties' behaviour. For example, the potential of greater disruption if the union implemented rotating strikes, or the possibility that union members might choose to work instead of support strike action, creates pressure on the parties to reach an agreement. Certainly, in his report Mr. Whitaker underscores the need for the parties to actively take responsibility for reaching agreements.

OPSEU has also proposed that the contract expiry date remain fixed at August 31. They suggest that this is consistent with the academic school year and that bargaining should be coincident with that timetable. The reality is that collective bargaining has its own pace. I can only

remember once in the past decade that I'm aware of where a collective agreement was actually reached by the expiry date. I know that from personal experience, because I chaired the management bargaining team in that round. Other than that, they have not generally been concluded on August 31.

The ability to adjust the expiry date of a collective agreement allows parties to fashion wage increases and other collective agreement items to better reflect their interests. This bargaining tool is available to the vast majority of workplaces which fall under the Ontario Labour Relations Act. There is no reason why it should not be available to the parties in the college sector.

OPSEU is proposing that Bill 90 be amended to provide access to interest arbitration, both in first-contract situations and in regular collective bargaining.

Whitaker's report specifically recommends that the act be amended to eliminate the provisions which allow the parties access to interest arbitration, and Bill 90 has done so. He identifies an over-reliance on third party intervention as a cause for the current labour relations climate in the college sector.

Mr. Whitaker emphasizes that the changes to the act should require that the parties take direct responsibility for collective bargaining instead of resorting to third party intervention. We are supportive of Whitaker's position and recognize that if the parties bargain in good faith we can find a balance without relying on a third party. Agreements can reflect the priorities and needs of our students, our employees and our colleges.

These changes proposed by OPSEU harm the bargaining process and, if adopted, will also have a significant financial price tag attached.

There is one recommendation proposed by OPSEU that is our most significant concern. This issue is the adding of related employer and successor provisions to the CCBA. We are very concerned about this proposal as related employer and successor rights provisions will have a significant impact on the way we structure academic delivery models with private and public sector partners. As I underscored earlier, it is now critical more than ever that we have some flexibility in order to serve industry needs and retraining needs.

It is my understanding that this proposal was not made by OPSEU to Whitaker at the time of the consultations. Therefore, there was no opportunity for dialogue. What OPSEU is proposing is significant and restricts colleges.

**The Chair (Mrs. Linda Jeffrey):** Can I just tell you that you have a minute left.

**Ms. Barbara Taylor:** Okay; thanks.

In order for us to deliver programs, many of which are connected to the government's commitments such as apprenticeship and second career, we need to be able to be flexible and enter into those private and public sector partnerships.

As the president of Canadore College, I know how hard all of our staff work to deliver to our students a high-quality education, and to our employers a high calibre of trained workers with advanced skills. But even



with gains in college funding under Reaching Higher, and the cost savings and efficiency measures we have put in place, I have seen our college and many others across the province struggle to make ends meet. It is a fact that funding for colleges is not sufficient to enable us to sustain and build upon the programs and services students and employers demand now, and changes that will significantly impact our bottom lines will make our job nearly impossible going forward.

Several colleges, including my own, are experiencing severe fiscal pressures and may even be facing deficits in spite of all our efforts.

1400

**The Chair (Mrs. Linda Jeffrey):** Do you have a closing statement?

**Ms. Barbara Taylor:** In closing, I would just like to say that I am supportive of Bill 90 and strongly recommend that our proposed changes are adopted by the committee. I believe the recommendations will make the legislation stronger and improve the learning environment of our students, but only if we remain true to the intent of the Whitaker report and the draft bill before you today. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for your deputation.

#### CARON FITZPATRICK

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Caron Fitzpatrick. Welcome. As you get yourself comfortable, please say your name for Hansard, and if you speak for an organization could you mention them at the beginning of your presentation. You will have 10 minutes. If you leave us some time at the end, we'll be able to ask questions. I believe your handout is being given to members around the table now.

**Ms. Caron Fitzpatrick:** Good afternoon. My name is Caron Fitzpatrick and I am a part-time professor in the School of Health and Community Studies at Algonquin College. I've been teaching at Algonquin for eight years, part-time. Last year, I was scheduled to teach four courses for a total of 11 hours a week. I wish our friend Mr. Jim Wilson was actually here, because I could answer that question he had about hours.

**The Chair (Mrs. Linda Jeffrey):** He can read about it.

**Ms. Caron Fitzpatrick:** Okay.

This would take me out of the part-time category and put me into partial load. Having a partial load, for those of you who don't know, is like holding the golden ticket. You are now part of a union and therefore paid, in my case, approximately three times what I am paid to do when I work six hours a week.

After I had prepared all of my lectures and was ready to begin my year, I received a call from my chair offering me more hours, which would make me a sessional instructor. I was told at that time that this was the only solution, as my partial-load status had only come to her attention recently. I was unable to take the extra hours, as I had already accepted other work. I was then told that I

had to take the extra hours or have none of them. So I was left at the last minute with no employment, feeling angry, frustrated and cheated.

I applaud the Liberal government for recognizing the injustice of the situation that professors like me face each day, but I have concerns about the content of Bill 90 as it stands today. There are two issues that I would like to address today: the removal of the jeopardy clause and the addition of two more bargaining units.

It is critical that students' education not be put at risk in the event of a strike. Inevitably, students will be used as bargaining chips to put pressures on the professors who face our students each day. Over the course of two to three years, we develop relationships with our students. We get to know them on a personal level. We know where they work their part-time jobs and when their family members are ill. When push comes to shove, many professors will go back to work to ensure that the students who respect and look up to them will not lose their year.

Our last strike in 2006 had little to do with financial gain for faculty; it was all about quality. It was about class sizes and the ability to provide quality education to our students. Had the jeopardy clause not been in place, I believe that our students would not have made the gains in educational quality that they have today.

Education cannot be treated like a car company left to duke it out for months or even years. These are students who have paid for a quality education and, in most cases, our students would never be able to recover financially if they lost their year; they would simply lose their right to a quality education. While it is obviously important to address the needs of both the employer and the employee in this legislation, it is critical that the needs and rights of our students be protected.

My second concern is the addition of two new bargaining units. Not only would the addition of part-time bargaining units be costly and cumbersome, but I fear that I will be left in the same position that I am today: limited in the hours that I can work and the positions within the college that are available to me. I do exactly the same work regardless of the hours that I teach. Why should I be segregated from my full-time colleagues?

The primary reason for wanting to join the union was to be treated with the respect and equality that our full-time colleagues have enjoyed for decades. Separating us into two bargaining units continues this historical cycle of segregation. In a system with four bargaining units, there will continue to be haves and have-nots, and I will continue to be offered the work and wages within the confines of my separate unit. This is contradictory to the very foundation of equality. Again, I repeat, I do exactly the same work, whether I work six hours a week or 24. Why should I be treated differently? We need one voice, one unit, providing the same support and security to all, a system of equality that is long overdue.

I absolutely welcome questions on these issues.

**The Chair (Mrs. Linda Jeffrey):** You've left the most time of any speaker today. A whole two minutes for each party, beginning with Mr. Moridi.



**Ms. Caron Fitzpatrick:** I want the questions. I'm not avoiding the questions.

**Mr. Reza Moridi:** Thank you, Ms. Fitzpatrick, for your deputation. With regard to a jeopardy clause, given the fact that the government has the right to always bring in back-to-work legislation, how do you think that removing this jeopardy clause from the bill—in the meantime, the government has always that right to bring in back-to-work legislation. Would that substitute for that requirement?

**Ms. Caron Fitzpatrick:** No, and I'll tell you why I feel that way. It makes sense that you will call us back to work. We don't want our students to lose—and in my case, I teach in the faculty of early childhood education, and our students have workplace time that they need to accomplish. Our employers require that they have those hours on the floor. I believe another presenter was speaking to that issue. We provide them with the training that they need to work. They're unemployable without it. In the time it takes you to go back and write that legislation, are my students going to get the hours they need on the floor so that they are employable? You can bring them back and I can educate them, but will they get the hours they need of practical time on the floor to be employable? In many cases, no, they will not. So the time that it takes you—if that is your intention, to write that legislation and order us back, why would you not just put it in there in the first place? That's my question.

**Mr. Reza Moridi:** Thank you.

**Mr. Jim Wilson:** Thank you very much. Sorry, I was out of the room, but I caught up to you in reading your text. Thank you for the explanation of partial load and part-time, although I will tell you that our wonderful Mr. Fenson here provided us with an instant explanation after I asked the question.

**Ms. Caron Fitzpatrick:** It is one hour. You're right. One.

**Mr. Jim Wilson:** Yes. You've certainly given us a lot of food for thought there. Just going back to what Whitaker said, because that's where the government keeps in this whole two units versus four units argument—I'll just ask you, and maybe I should have asked the students, but it says—this is about some advantage that the students might get out of the four versus two:

"The four-bargaining-unit structure at the outset will advantage students in that it will permit them as a group to use and rely on their numerical strength within the part-time support bargaining unit. This should be reflected in the ability of students to participate in and affect the collective bargaining process to their advantage—particularly in the crucial first few rounds of bargaining. This is the best way for students to ensure that their unique interests in work assignment and work disruption are properly protected."

It's probably a good question for the students, but from your perspective, is there merit in the argument that doing this step-by-step process is good for students?

**Ms. Caron Fitzpatrick:** I say no. I say employment is employment. When that student is working in the regis-

trar's office and they are a student at the college, they are registering students. That's what they're doing. If it is a non-student, part-time employee, they are registering students. That's what they're doing. They could be doing it for two hours a week, they could be doing it for six hours a week. If it is a full-time person in the registrar's office registering students, that's what they're doing. They're doing it for 25 hours a week and they're unionized. So I ask, what difference does it make whether they're a student, whether they are a part-time employee or whether they are a full-time person working in the registrar's office? Why are they paid differently? They're doing the same work. How does it benefit us to put them in two different unions? We have the same issues, certainly in faculty. If you speak to our part-time faculty, we have the same issues the full-time faculty has. We have all the same issues. We teach the same students, we teach the same content and we have all the same issues. We don't have the grading time, we don't have the prep time; those are the things we're looking for.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Marchese.

1410

**Mr. Rosario Marchese:** Thank you, Caron. Mr. Moridi asked the question to a previous speaker about the bill and how it is that you could move from four bargaining units to two. The bill requires that the following conditions be met before any change happens, and I wanted your response to it. You need four of those conditions:

(1) The unions and the council must come to the Ontario Labour Relations Board with a joint proposal to modify the makeup of one or more bargaining units.

(2) If different bargaining units are represented by different unions, the proposal must be supported by all unions representing any bargaining unit that is changed or modified.

(3) Both of the new part-time bargaining units must be unionized and have a collective agreement in place.

(4) At least one year must have passed after Bill 90 receives royal assent.

The government says, "You see, we make it possible for you to get what you want."

What do you think of those four conditions?

**Ms. Caron Fitzpatrick:** It's complicated. It's long; it's a stalling tactic; it's a divide-and-conquer. Why does it exist? I don't understand why it exists. It is a long, tedious process that probably accomplishes nothing, because you need my part-time separate bargaining unit to agree with the full-time bargaining unit. That's not going to happen. The college wants us to be in separate units because we'll never accomplish—we are paid so badly compared to our full-time counterparts that we'll never accomplish what they have. Parity will not happen. If we are not in the same unit, we will not achieve parity.

**Mr. Rosario Marchese:** The other question is the removal of the jeopardy clause. I agree with you that it's problematic. I would think that the colleges would find it agreeable to them as well, yet not one college has talked



about the issue of the jeopardy clause. Do you have a sense of why they wouldn't be agreeing with you?

**Ms. Caron Fitzpatrick:** It's clearly to their advantage, is it not? We develop relationships with these students, and look Mary in the face. I have had students who have come to me—for example, I had a student who failed her placement and she came to me in tears, saying, "I can't graduate. I can't come back, pay \$800 and redo that placement. It's not possible." So students who are at risk of losing their year, we know their stories; we know the ones who can't come back. The college doesn't. They're there and they're bargaining. Who is more likely to go back to work? Who is more likely to make the concessions? Whom is this benefiting? It's not benefiting the students. It's benefiting the colleges.

**The Chair (Mrs. Linda Jeffrey):** Thank you for your deputation today.

**Ms. Caron Fitzpatrick:** You're welcome.

#### JENNIFER BRYAN

**The Chair (Mrs. Linda Jeffrey):** Our next presentation is Jennifer Bryan. Welcome. Thank you for coming today. You don't have a handout today?

**Ms. Jennifer Bryan:** No.

**The Chair (Mrs. Linda Jeffrey):** Okay. If you are speaking for a group, could you mention that when you mention your name? After you begin, you'll have 10 minutes. If you leave us some time at the end, we'll be able ask you questions. You have the floor.

**Ms. Jennifer Bryan:** My name is Jennifer Bryan. Although I hold three separate part-time positions at Loyalist College in Belleville—yes, that's three separate, part-time positions at Loyalist College—I am here today to address the implications of Bill 90 on part-time support staff.

Generally speaking, part-time support staff work 24 hours per week. You will find us throughout the college, in almost every department, in almost every role. We have offices, desks, phone extensions, e-mail accounts and, when the role requires it, we are trusted with confidential information. Generally speaking, full-time support staff work 35 hours per week. They can also be found throughout the college, in almost every department, in almost every role. They too have offices, desks, phone extensions, e-mail accounts and, when the role requires it, they are trusted with confidential information. So what is the difference between part-time and full-time support staff?

With the exception of hours worked, part-time support staff and full-time support staff are no different. Unfortunately, Bill 90 identifies us as different, so different that we require our own separate bargaining unit.

For 30 years part-time support staff have been stuck in a system that perpetuates a classist mentality. Placing us into a separate bargaining unit would only intensify this social segregation. The exclusionary provisions of the original Colleges Collective Bargaining Act did nothing more than leave part-time support feeling disrespected,

undervalued and highly disposable. While these outcomes were not intentional, we must learn from the past and recognize that isolating and labelling employees has the potential to produce social and cultural norms that are not only damaging to the employees but to the culture of the workplace as a whole.

One bargaining unit would foster a sense of equality amongst the support staff. In addition, it would alleviate some of the administrative challenges existing in community colleges today. It would best allow for a smooth transition from part-time to full-time and vice versa. Having all support staff in one unit would also provide both the union and the colleges with a firm set of rules that are applicable to all support staff across the province. Standards such as these are the hallmark of fairness. Standards such as these would improve the quality of services provided to our students.

Part-time support staff across Ontario are eagerly looking forward to the day we finally get to sit down and negotiate our first contract. Unfortunately, Bill 90 does not include a provision that permits the settlement of collective agreements through arbitration. A first contract will be a historic moment for part-time college workers. However, we must not be brazen enough to believe that it will be settled quickly, quietly and without disagreement. Bill 90 needs to be amended to permit first-contract arbitration and the settlement of future collective agreements through arbitration.

Currently, part-time support staff are people who live in a climate of intimidation because they are at the bottom of the workplace hierarchy. We have waited 30 years for the right to bargain collectively. As part-timers we are thrilled to see this piece of legislation and appreciate the speed with which Bill 90 has moved through its first two readings.

Collective bargaining will no doubt be a good thing. Collective bargaining with part-time and full-time workers in the same unit would be a great thing. More importantly, it will grant part-time support staff what they so very much deserve: respect in the workplace.

**The Chair (Mrs. Linda Jeffrey):** I think you've broken the record. Now we've had two presenters giving two minutes for every party to ask a question. We'll begin with Mr. Wilson.

**Mr. Jim Wilson:** Thank you very much. Wow, three jobs. How did you have time to come here today?

**Ms. Jennifer Bryan:** I'm not getting paid.

**Mr. Jim Wilson:** You may not be able to answer this, but I gather the reason, from the government's point of view, is that it all probably just boils down to money, in terms of going into the same unit as the full-time support staff right away, rather than this process that may take forever, because you'll probably reach parity obviously a lot faster if you're in the same unit with them. But aren't you worried about layoffs?

The government won't talk money at this committee. I started this morning by asking, "Where's the money?" and many, many presenters have expressed the same concern. Because it is so tenuous in many of the jobs the



part-timers are doing, don't you think the colleges will just be forced to lay off people in the first couple of years if things go too fast?

**Ms. Jennifer Bryan:** I can speak from both perspectives, because I am part-time faculty and part-time support, and I can only give you my personal experience. At the college where I work, part-time faculty contracts are not being renewed left, right and centre, just with the threat of this legislation. The entire justice studies department was cleared out over the summer, and that's partial-load, part-time, sessional, a lot of them. From the part-time support staff perspective, I don't see it as much simply because there are a lot of justifiable positions at part-time. However, I may not be the best one to answer that simply because I can only give you the perspective of my experience, the part-time support perspective.

**Mr. Jim Wilson:** Very good. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Marchese.

**Mr. Rosario Marchese:** Jennifer, I'm going to ask you a question. I haven't been able to ask the colleges any questions because there's never any time to ask them questions. My sense is that they would be supportive of some of the changes you're recommending, including some of the changes in OPSEU's 16 recommendations. They probably would. My sense is that they're opposed to these changes because it means that they are going to lose the flexibility they need to be able to raise money. They're underfunded, you understand, and they've been underfunded for years, so they're worried. My sense is that they're against successor rights and against two bargaining units and against grievance rulings that should apply to all—there's a whole long list—but that they would change their minds if the government would just give them a few more dollars. Is that your sense too, or is it just my own imagination?

**Ms. Jennifer Bryan:** No. They're broke. Quite frankly, they're broke, and so they've been having to cut corners. I had the head of HR look at me and say, "When I look around my college and see furnishings that are falling apart, faculty still trying to teach with overhead projectors from 1972 when the darned place opened," and then all of a sudden they have to hire faculty or support staff. They have to make that decision. If they need the teaching materials in the classroom, they have to make that decision. They need money; that's all there is to it. If they had more money, I think that they would be far more supportive of this.

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**Mr. Rosario Marchese:** But you heard Mr. Moridi today. He and the minister said, "My God, we're giving so much more money." Is it possible that they're giving all these billions and billions of dollars and we're still having these antiquated problems in the system and we're still number 10 in Canada? Is it possible with all the money they're giving?

**Ms. Jennifer Bryan:** I don't know where the money is, sorry.

**Mr. Rosario Marchese:** But it's not there?

**Ms. Jennifer Bryan:** It's not there; I'm sorry. When we have every administrator—and this is a scary moment, when you're sitting in a town hall meeting and every single administrator in a college is standing there, united, saying, "We're broke." That's a scary moment in a community college, especially for part-time staff and faculty, knowing that we have Bill 90 in front of us.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for coming today.

**Ms. Jennifer Bryan:** Am I done?

**The Chair (Mrs. Linda Jeffrey):** Oh, sorry, I forgot Mr. Moridi. I went too quickly: Mr. Moridi gets two minutes.

**Mr. Reza Moridi:** Thank you, Ms. Bryan, for this deputation. With regard to the money question, I would like just to refer to the fact that the Reaching Higher program invests \$6.2 billion in our post-secondary education system, which is the highest investment in our post-secondary education in the past 40 years.

But my question is that we're here today to discuss concerns expressed by part-timers from various groups who feel that they will not achieve what their full-time colleagues do. But can you agree that through Bill 90, if passed, allowing the choice for part-timers to unionize and then collectively bargain, they would be better off than before?

**Ms. Jennifer Bryan:** I'm sorry, just to clarify: You're asking that if Bill 90 is to pass as is, in four units?

**Mr. Reza Moridi:** Yes.

**Ms. Jennifer Bryan:** And then—sorry, the last part of the question?

**Mr. Reza Moridi:** Would they be better off in the future than in the past—

**Ms. Jennifer Bryan:** No.

**Mr. Reza Moridi:** —if they didn't have any rights to bargain?

**Ms. Jennifer Bryan:** I'm sorry, I support Bill 90, not with four units. I think if we were to leave it with four units, part-timers will never, ever be at parity.

**Mr. Reza Moridi:** The reason there are four units comes specifically from Kevin Whitaker. In his report, he proposes four units: two units for part-timers, mainly because the part-timers have their own specific concerns and he didn't want part-timers getting entangled within the bargaining of full-timers.

**Ms. Jennifer Bryan:** We are no different.

**Mr. Reza Moridi:** That's the specific reason that Kevin Whitaker put in his report, and the bill reflects his report.

**Mr. Rosario Marchese:** We can change it.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for coming.

#### SENECA COLLEGE

**The Chair (Mrs. Linda Jeffrey):** Our next delegate is Seneca College. Good afternoon and welcome. Thank you for coming today. If you could state your names if you're both going to be speaking, and the organization



you speak for. You'll have 10 minutes after you've introduced yourselves. If you leave some time at the end, then hopefully Mr. Marchese will get to ask his question. He's been waiting all day.

**Mr. Rosario Marchese:** The Chair's listening.

**The Chair (Mrs. Linda Jeffrey):** I'm listening. I'm hoping he'll get to ask his question.

**Dr. Rick Miner:** Give me that one-minute notice so I can give him a little time.

**The Chair (Mrs. Linda Jeffrey):** You might want to leave more time, because Mr. Marchese's questions last a minute. You have the floor.

**Dr. Rick Miner:** My name's Rick Miner. I'm president of Seneca College. With me is Susie Vallance, who is our vice-president of human resources. We appreciate the opportunity to come before the committee and talk about Bill 90.

Seneca College is the largest college in Canada. We operate in 11 different locations in north Toronto and York region. We offer 170 different degrees, diplomas and certificates. We enrol over 100,000 students annually. We have over 100 academic partnerships with universities and colleges around the world. We work with literally thousands of businesses in the areas of advancing curriculum development and applied research, and we're proud of our faculty, staff and administrators who have made Seneca College one of the finest post-secondary institutions in the world.

Previous speakers have provided detailed comments on Bill 90, and while I'll provide some of my own in a moment, I'd like to step back and provide a somewhat broader picture.

The world is changing, and Ontario has to decide whether it's willing to change as well. It cannot isolate itself, but should lead rather than follow change.

The facts are apparent. We have now moved into a global economy with global competition. The Canadian dollar is high and it will probably stay high as long as we have large oil reserves. Shortly, there will be a huge number of retirements from the original baby boom, which will further increase the skills shortage in Ontario and in Canada. There are varying demographic realities within Ontario, so over the next decade some areas of the province will increase their population significantly while other areas of the province will shrink. We are increasingly reliant on immigrants, new Canadians, to provide our labour markets with the skills and expertise we need. We have moved into a knowledge-based economy, which makes post-secondary education more and more important.

To put this all in perspective, this year China will graduate more engineers than Canada has graduated in its entire existence. We are in a globally competitive economy.

What's our future? Our future is ultimately going to be based on the literacy, expertise and knowledge of our citizens. Colleges and universities will play an instrumental role in this province's future prosperity, so we need educational institutions that are relevant, respon-

sive, adaptive and that provide high-quality programs. In this regard, we applaud the government's move to reform the Colleges Collective Bargaining Act. Certainly, after 40 years, one would think something needs to be done.

The recommendations made by Whitaker go a long way toward creating an environment and structure that will provide the colleges and their employees with a mechanism to enhance the quality of education for Ontarians. Colleges worked co-operatively with Mr. Whitaker during the consultation period. I have to say I'm somewhat disappointed that all the issues were not brought before Whitaker at that time and new issues are emerging, but this committee will work through those.

Clearly, Seneca College supports the right of all college employees to have the option to associate with whom and how they wish. That is their choice. It should be their choice.

Let me address a couple of the specific issues, many of which you've already heard.

One is the question of four, rather than two, bargaining units. I support the initial position of having four rather than two units. Employees should have the right to associate with others who have common interests and common conditions of work.

Full and part-time employees in the colleges are different. The assumption that part-time employees are simply individuals wanting to move to full-time employment is not in evidence at Seneca. Most of the part-time employees want to work part-time. Yes, some do want to work full-time, but they are a smaller proportion. A merger of the two could be a disservice to both. For example, one of the questions that would be interesting to ask is whether the union, under their proposal, plans to merge the seniority lists, and if so, under what conditions, full parity or partial parity. Depending on how that decision is made, all of a sudden you start realizing whether it is in fact a service to merge or not. That's a huge matter.

Within the staff unit, certainly our student employment is very different from most of our full-time employment, and the students need to be protected.

Therefore, the colleges and Seneca support bargaining unit structures established under Bill 90.

A second point deals with the longer term, and here I have a somewhat different view. I'm not sure if four is right. I'm not sure if something more than four or maybe even fewer than four is right, but what I do realize is the whole environment is changing and we can't wait another 40 years to figure out how to get it right, because if we don't have it right we're not going to be a service to Ontarians.

Right now, we see conditions of work becoming increasingly blurred. Forty years ago, if you were a staff member you did this, if you were a faculty member you did that, and the demarcation was pretty clear. Right now, it is a very, very blurred environment in terms of when individuals would fall under faculty, when individuals would fall under staff, because of the advent of technology. We have many individuals who are currently



staff who are very much involved in the teaching and learning process. So that is becoming more blurry.

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Also, the post-secondary system is evolving. We have huge differences in size, programs and geography, and to say that all 24 colleges are the same and they should all be treated the same is becoming increasingly problematic. I would argue that there may need to be a desire to have a bit more flexibility in terms of redesigning bargaining units in the future based on this evolutionary process that I see occurring.

A third issue deals with the timing of certification votes. As defined, colleges are presented with an enormous challenge, particularly in the part-time area. Throughout the system, we have tens of thousands of part-time employees in literally hundreds of locations. The Ontario Labour Relations Act includes provisions that specify that votes should normally be held in five days; in contrast, Bill 90 provides discretion about when the vote should occur. We support this approach because we feel that employees' rights should be respected. If there's an arbitrary decision on time that disadvantages employees, we certainly cannot support that.

The last item I'll bring forward—and I'm skipping through in reference to time—is the actual agent. As the bill now sets out, it talks about two representatives from each college. This is onerous. You can imagine 48 people trying to get together to reach some kind of decision. The colleges realized that this was onerous in their own regard and, on the encouragement of their board members, redefined the structure of Colleges Ontario. You have one representative from each college. I think you may consider reducing the size of that unit in order for it to be a bit more responsive and a bit more flexible.

I think in the long run, this is an important decision on the part of the government and for Ontarians, and by and large we support the recommendations that came out of Whitaker. We would encourage the government to move forward with these changes as quickly as possible. Thank you very much.

**The Chair (Mrs. Linda Jeffrey):** You've left about 45 seconds for each group to ask a question, beginning with Mr. Marchese.

**Mr. Rosario Marchese:** Quickly, were you here for Mr. Turk's presentation? James Turk? It doesn't matter.

**Dr. Rick Miner:** No.

**Mr. Rosario Marchese:** He says that in 1998, the Ontario Labour Relations Board dealt with an issue at the University of Western Ontario. The question was: Does the unit which the union seeks to represent encompass a group—

**Dr. Rick Miner:** I was here. Yes, I did hear it.

**Mr. Rosario Marchese:** You were here. You heard the board's answer: "Although the job expectations of the full-time faculty and those of the faculty with limited duties are different and that the faculty with limited duties are not required or expected to do research and administrative work, they have in common an interest in academic work and scholarship and to all intents and purposes, together they are distinctive from other cate-

gories of university employees in that they are responsible for the academic program which must be completed by the students. There is more that binds the two categories of faculty than separates them."

Given that kind of ruling, do you still maintain that you are actually concerned about the separate units and that they should be protected and respected when most of these groups are saying, "We want to have two bargaining units rather than four"?

**Dr. Rick Miner:** A quick comment there: Be very careful of what you select. For example, the illustrations he gave were both university, and university full-time/part-time is very different from college full-time/part-time in terms of the nature of their work, who is drawn to that teaching and who is not.

The second thing you want to be a little careful about is how you select. For example, if you go elsewhere, in Atlantic Canada, what you will find are separate units. You will find part-time units and full-time units. You'll find the same thing out west: part-time units, full-time units. So you do have some cases where they're merged, and you have some cases where they're separate.

**Mr. Rosario Marchese:** But if you have academic staff and part-time staff—

**The Chair (Mrs. Linda Jeffrey):** Mr. Marchese, please. You used a whole minute for your first question.

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** I know that. You're going to have to talk to him later.

Mr. Moridi.

**Mr. Reza Moridi:** Thank you, Dr. Miner and Ms. Vallance, for coming to this committee. And particularly Dr. Miner: I thank you for your insight and for bringing your long-standing experience and expertise both in the universities and colleges of this country and particularly this province.

In relation to your comment about the college employer council, the board: As you mentioned, based on Bill 90, we have 48 members, two from each college. Do you have any other proposition for the committee?

**Dr. Rick Miner:** I think you could consider following the decision made by our board of governors, which was to appoint each of the university presidents to the council. That would at least get it down to 24. It's still a little hefty, by my view. Because within the current legislation, you avoid the conflict of interest with the presidents because it's only boards that can deal with the administrators on the salary level, so you wouldn't have a conflict there.

**Mr. Reza Moridi:** Thank you very much.

**Mr. Jim Wilson:** Two things very quickly that are sort of administrative but they may be amendments that are accepted by the government; one is just on the board itself. Did Colleges Ontario survey the chairs? I understand the president or the chair of each college would—

**Dr. Rick Miner:** They did survey the presidents, who consulted with their chairs, but I can't say for sure that everybody was consulted. Certainly the presidents were consulted.

**Mr. Jim Wilson:** I'll ask Colleges Ontario.



The second one is with respect to making sure you have accurate lists of your part-time workers. You're so large, you're probably a good one to ask. Some pres-enters today have scoffed at the fact that if you don't have lists of your employees, you're not administrating things very well. But it is an amendment that the administration side—

**Dr. Rick Miner:** Actually, it's easier for us than some of the northern colleges, because at least we have seven locations that are all within 30 miles of each other and you pretty well know where things stand. When you're in the north and you have places all over and you need to be exact in terms of who is there, in that status, on that day, it's tough. This recommendation is not in any way to limit the ability of people to associate. In fact, it's trying to make sure we get it right. Giving some discretion, depending on the time of year, even the day of the week, to a board to say, "Okay, you've got five days," or seven days or something, I think would be appropriate.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for your deputation.

#### DEBORAH HEADLEY

**The Chair (Mrs. Linda Jeffrey):** Our last deputation today is Deborah Headley. Good afternoon. Welcome.

**Ms. Deborah Headley:** Good afternoon. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you for coming. If you speak for a group, could you mention that as you introduce yourself, and after you've done that, you'll have 10 minutes. If you leave an opportunity at the end, we'll be able to ask questions of your deputation. I believe your handout is being distributed as I speak.

**Ms. Deborah Headley:** I missed all that last part; sorry.

**The Chair (Mrs. Linda Jeffrey):** If you could first of all say your name and the group that you speak for, you'll have 10 minutes, and if you leave time at the end we'll be able to ask questions of what you say. We have a copy of your deputation and when you're ready to start, please begin.

**Ms. Deborah Headley:** Thank you very much. I want to thank you for allowing my voice to be heard and for my story to be told today. My reality is that I'm a person who probably represents the majority of workers in the college system, yet our voices are rarely heard.

My name is Deborah Headley and I'm a professor in the faculty of community services and health sciences at George Brown College. I have taught continuously at the college for over 15 years, 13 in a non-full-time capacity. That wasn't always at my choice.

Perhaps today I hope to bring a different perspective or perception to this committee. I wish to offer you a different understanding of how Bill 90, in its present form, has an impact on workers like me. I want you to know that I'm not just here for myself and the people I represent; I am also here for you—yes, you—the members of this committee, because I believe that done well this legislation could mean justice not just for some, but this legislation could achieve justice for all of us. Justice

for all is what I hold as a true measure of a fair, healthy and productive society.

Let me begin by saying that there's really no other place in my profession that I experience such inequities as in the college system, and I think that's really unfortunate. I also want to say that, unlike some other workers, every day I face prejudice and discrimination as a member of many groups that are both visible and invisible. I can only state, from my observation, that at least at George Brown College, part-timers are heavily represented by women, people of colour, internationally trained professionals, new immigrants and people who are differently abled. We are people who bring a high level of post-secondary education and recognition to our fields.

Today I want to address one of those invisible groups to which I belong, and that is as a part-time college worker in the province of Ontario.

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Working at my college, in addition to facing everyday bigotry and marginalization, I have to deal with the mistreatment that has come as the result of my employment status. Discrimination based on employment status doesn't just add to my social inequities, it compounds them. This is because I have minimal, if any, recourse, and my employment status prevents me from accessing those mechanisms that are rightly and readily available to both administrators and full-time workers in the college system, and which workers, even students, in other educational systems have that I don't have in the college system.

For me, I want less, not more, barriers as a part-time college worker. Right now, there is no employment equity, no way that I can equitably compete for work. People like me represent the last hired and the first fired. Why make it harder for me by dividing us up even further? Why put us into four bargaining units?

There are wage inequities because there is no consistent standard, and for many people like me for whom this is a core, not a secondary, source of employment—this is not just extra money—it is not even a living wage.

There are workplace health and safety violations that go unchecked. We are being forced to work illegal hours under these substandard conditions or risk losing our jobs because we can just be replaced. Why do we have to choose between the job that we love and being able to take care of our families because we work part-time?

There is no ability to grieve because we have no one to represent us or advocate on our behalf within the college: not human resources, not administration at any level, not even human rights departments, and of course no union. We hope to be getting that soon, of course. I know this, because I have tried. We are forced to use our own resources, and these are, as you can imagine, often limited. Sometimes, to speak out is to face severe consequences. Why make our grievance process systemically complicated? It is difficult enough as it is.

I have faced abuse, hate behaviour, reprisal, hostility, aggression, loss of teaching or other work assignments and loss of work hours because my employment status



allows these acts to just go unchecked. So I don't want less accountability; I want the legislation and the systems that it governs to be something that is responsible and principled in recognizing and removing the barriers that we face—I and the people whom I represent.

Despite the hard work that has gone into giving me these new rights, the unfortunate fact remains that Bill 90 in its current form is still inadequate in providing and ensuring me the rights and working conditions that would allow me to offer the best learning opportunities to my students. It lacks the very mechanisms that currently offer fair treatment to full-time workers, and it divides us. What we truly desire is equitable access to what already works and improvements or additions to those measures that would make our working conditions fair. I believe that just because we've achieved legislative change, it does not mean that we are not entitled to quality treatment in that change.

In closing, I would like to reiterate that to implement a piece of legislation that for me, when I read it over, had the potential to be regressive and therefore be even more oppressive to people like me by not just contravening my labour rights but certainly the human and civil rights which have been hard fought for, sometimes over hundreds of years, would not be a "right" thing. I don't believe that it's anyone's intention to create a piece of legislation that indirectly contributes to or reinforces my subjugation as a part-time college worker, particularly as one who also happens to be a member of already socially marginalized groups.

Bill 90 has great intentions—yes. I applaud that. I greatly appreciate your efforts. After all, it has been 33 years. But great intention doesn't mean that the parts that perpetuate my oppression are acceptable. It is like giving somebody who is starving a plate, but no food. Let me tell you that when I challenge those parts, again, I'm not just thinking of myself or people like me; I am also thinking of you, because I believe that there is no way that a person or people can continue to mistreat members of a society and that it doesn't somehow eventually have an effect on you. If we persist in an attitude or act that knowingly hurts others, it must result in psychological, ethical and moral damage to your conscience. When we talk about quality of education, what are we really teaching in Ontario's colleges?

So I ask respectfully today that you grant me this consideration and reflect on my words. I ask you to take the next steps in this journey of part-time and sessional workers using a new and different lens. And I ask of you in this spirit and as good stewards of justice that you strongly consider and implement the recommended amendments to Bill 90.

I appreciate your listening attention. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you. You've given about 45 seconds for each group to ask a question, beginning with Mr. Moridi.

**Mr. Reza Moridi:** Thank you, Ms. Headley, for your presentation. You spoke about civil rights and human

rights in your presentation. Would you think that these notions have to be addressed in Bill 90?

**Ms. Deborah Headley:** Absolutely. I think they have to be addressed in every piece of legislation.

**Mr. Reza Moridi:** Thank you.

**Mr. Jim Wilson:** Well, we should have had you at the beginning. You were one of the livelier and very articulate presenters.

In addition to the two-versus-four bargaining units—because you're obviously quite passionate about rights and your fellow colleagues, who also need to enjoy greater rights—is there anything else that you want to stress with us in the time you have? The cure-all won't necessarily all be in just two bargaining units; there must be some other things that—I think you need to audit your college, by the way, on a human rights side, if it's that bad. Anything else you want to stress for us?

**Ms. Deborah Headley:** I think the only thing I would add is that I didn't come into this process very lightly. I was very thoughtful and, if you ask my colleagues, I was very challenging with them about forming the union in the first place, because I knew what my treatment was like without a union and I knew what the treatment was like with people already being in a union. And I just know what my treatment is like generally in society, so I never take my membership lightly.

What I'm really asking today is not just to go into this process with that same sort of privileged lens, the same way of thinking and world view that you bring to many things. But I want you really to consider, from my perspective, the person who spoke last, the person who represents—and I'm not saying that nobody else represents those marginal groups, but I'm pretty visible, and it means something, not even just to my college or the administration but just walking into the classroom. It means something, and it doubles and triples the impact on me. But more than that, it doubles and triples the impact on students watching how I'm being treated, and for many students—students of colour, women, differently abled students and any of the identities that I represent—I am hope, I am possibility. So I could not agree with and support something that's going to diminish that.

**Mr. Rosario Marchese:** Thank you, Deborah. I think the issue of discrimination and racism is going to be with us for a long time, even—

**Ms. Deborah Headley:** I hope not.

**Mr. Rosario Marchese:** And I hope so too, in spite of all the best efforts of some of us. I think we need to challenge ourselves on a regular basis. And that doesn't mean politicians; it means everyone. That's an ongoing reality we have to deal with.

I believe that having a union is going to help. I recall a couple of years ago, when we were talking to part-time workers, they were afraid to talk about unionization, and they all expressed that, or at least the ones I talked to. I think it was a general rule that people were afraid. And so this will change it somewhat and this will help to deal, in part, with some of the questions you're raising.

On the issue of two bargaining units or four: You heard Dr. Miner saying that universities are different in



terms of university professors, college professors. My feeling is that, yes, they may be different, but their reality's the same in terms of what a college professor does and what a university professor does—full-time, part-time—that they're very similar. But what I'm hearing—

**Ms. Deborah Headley:** I'm sorry. I have a problem with my hearing, so when other people are moving around, I can't actually hear what you're saying.

**Mr. Rosario Marchese:** So my view is that if part-time workers—academic and support staff—are saying, "We want to be part of two bargaining units," it seems to me that we should be listening to them and that they might have a better sense of what protects them versus those who advocate for four units and argue that we're protecting them more by having their own separate little bargaining unit. What is your opinion on that?

**Ms. Deborah Headley:** Well, I'd like to have tea with the people who think it's different, because I think we have to have a fuller conversation about my experience. As I say, it doesn't sound like people have actually had an opportunity to sit down and hear from my experience. I don't know where that came from, because I know myself and my colleagues believe strongly and passionately in having the two units.

Secondarily, I've been working at the college for 15 years; I know my full-time colleagues. I've already developed a relationship with them. I've worked hard to build trust with them and them in me. Why am I going to undermine that by having four separate units and creating more dissension—or the potential for that, anyway.

With regard to the university thing, it's funny, because a colleague of mine who's actually a TA at a university laughed and said, "Oh, you don't even have a union and

you're part-time teachers?" So I think that we have to look at each system as a unique system, and we have to appreciate what that particular system needs, and not compare apples to oranges. I believe the reality is that we're all there, as faculty, anyway, to teach and, as support staff, to support the best education of students. The issue is not the number of units but how we best use the units, and I think two would be the best way to do that.

**The Chair (Mrs. Linda Jeffrey):** Thank you for your deputation.

**Ms. Deborah Headley:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** This concludes the deputations that we're going to receive on this bill. Committee, I would remind you that you will be receiving a summary of the presentations by Thursday at 5; that for administrative purposes you would have your amendments in to the committee clerk by Friday at noon; and that the committee will be meeting for clause-by-clause consideration of this bill on Wednesday, September 17, at 9:30 in the morning. We hope it'll be in this room, but we'll confirm that with you before that time.

Unless there's further debate, this committee is—Mr. Wilson.

**Mr. Jim Wilson:** Just a question: Did we receive any mail-in written submissions?

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** We've received everything.

**Mr. Jim Wilson:** Okay, thanks.

**The Chair (Mrs. Linda Jeffrey):** So you'll get a summary of that from the research assistant. We're adjourned.

*The committee adjourned at 1453.*



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# Official Report of Debates (Hansard)

Wednesday 17 September 2008

# Journal des débats (Hansard)

Mercredi 17 septembre 2008

## Standing Committee on General Government

Colleges Collective  
Bargaining Act, 2008

## Comité permanent des affaires gouvernementales

Loi de 2008 sur la négociation  
collective dans les collèges

Chair: Linda Jeffrey  
Clerk: Trevor Day

Présidente : Linda Jeffrey  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 17 September 2008

Mercredi 17 septembre 2008

*The committee met at 0935 in committee room 1.*COLLEGES COLLECTIVE  
BARGAINING ACT, 2008LOI DE 2008 SUR LA NÉGOCIATION  
COLLECTIVE DANS LES COLLÈGES

Consideration of Bill 90, An Act to enact the Colleges Collective Bargaining Act, 2008, to repeal the Colleges Collective Bargaining Act and to make related amendments to other Acts / Projet de loi 90, Loi édictant la Loi de 2008 sur la négociation collective dans les collèges, abrogeant la Loi sur la négociation collective dans les collèges et apportant des modifications connexes à d'autres lois.

**The Chair (Mrs. Linda Jeffrey):** Good morning. The Standing Committee on General Government is called to order. We're here today to begin clause-by-clause consideration of Bill 90, An Act to enact the Colleges Collective Bargaining Act, 2008, to repeal the Colleges Collective Bargaining Act and to make related amendments to other Acts.

Our first amendment is an NDP motion. Ms. DiNovo.  
*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** Sorry, I've got to go through my list. We're at section 1. There are no amendments to sections 1 through 7. Is there any debate? Questions? Comments? Seeing none, all those in favour? All those opposed? That's carried.

The first section, section 7.1, Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that the bill be amended by adding the following section:

"Voluntary arbitration

"7.1(1) Despite any other provision of this act, the parties may at any time following the giving of notice of desire to bargain under section 3, irrevocably agree in writing to refer all matters remaining in dispute between them to an arbitrator or a board of arbitration for final and binding determination.

"Powers of arbitrator or board of arbitration

"(2) The agreement to arbitrate shall supersede all other dispute settlement provisions of this act, including those provisions relating to conciliation, mediation, strike and lockout, and the provisions of subsections 14(7), (8), (11), (12) and (18) to (20) apply with necessary modifications to the proceedings before the arbitrator or board of arbitration and to its decision under this section.

"Effect of agreement

"(3) For the purposes of section 38, an irrevocable agreement in writing referred to in subsection (1) shall have the same effect as a collective agreement."

This is simply to allow either party to request binding arbitration. I hearken back, my friends across the aisle here, to David Peterson's history with this and the first passing of it, so it's in the great tradition of the Liberal Party of Ontario that we allow this to happen; and he was right. So why should we take out what has been part of the Ontario Labour Relations Act with this bill? It seems silly, in light of the step forward we hope that this bill is going to be.

**The Chair (Mrs. Linda Jeffrey):** Questions or comments?

**Mr. Reza Moridi:** The Whitaker report specifically recommended removing the binding arbitration provision from the act to send the right signal to the parties to resolve their issues at the bargaining table rather than relying on the arbitrator.

**The Chair (Mrs. Linda Jeffrey):** Any other questions or comments?

**Ms. Cheri DiNovo:** Just to respond back to my friend, in fact this will lead to more wrangling, not less; to longer negotiation, not shorter; and we have a history of that in the province of Ontario. Really, this is about the rights of teachers and the rights of students, I might add, because teachers' and students' rights are tied up in this. I would certainly ask for a recorded vote on this.

**Ayes**

Bailey, DiNovo, Wilson.

**Nays**

Colle, Mitchell, Moridi, Zimmer.

**The Chair (Mrs. Linda Jeffrey):** That's lost.  
Section 7.2, Ms. DiNovo.

**Ms. Cheri DiNovo:** It's a sad day when the Tories vote with me and the Liberals vote against me.

I move that subsections 8(1) and (2) of the bill be struck out and the following substituted:

"Term of collective agreement

"8.(1) Every collective agreement shall,

"(a) provide for a term of operation of not less than one year;



“(b) state that it is effective on and after the 1st day of September in the year in which it is to come into operation”—

*Interjection.*

**Ms. Cheri DiNovo:** Oh, sorry. I’m jumping ahead of myself.

I move that the bill be amended by adding the following section:

“First agreement arbitration

“7.2(1) Where the parties are unable to effect a first collective agreement and a conciliation officer has made a report to the Minister of Labour under clause 7(3)(b) to the effect that, despite his or her efforts, the terms of a collective agreement have not been settled and the minister has informed the parties of the report by notice in writing in accordance with subsection 7(4), either party may apply to the board to direct the settlement of a first collective agreement by arbitration.”

Again, this is binding arbitration—

**The Chair (Mrs. Linda Jeffrey):** Can I ask you to read the rest of that amendment, please, under “Same.” At the bottom of that paragraph, there’s the last sentence that’s part of the amendment.

**Ms. Cheri DiNovo:** Okay; sorry.

“Same

“(2) Subsections 43(2) to (26) of the Labour Relations Act, 1995 apply with necessary modifications in respect of subsection (1).”

Again, these are the same arguments that I used before. In this case, we’re looking at binding arbitration where both parties agree.

**The Chair (Mrs. Linda Jeffrey):** Questions or comments?

0940

**Mr. Reza Moridi:** The Whitaker report specifically recommends that the parties resolve their issues at the bargaining table rather than relying on arbitration. The Labour Relations Act’s first contract arbitration provision does not provide automatic access to arbitration for the first contracts. In this particular case, the parties have 30 years of experience in negotiating and bargaining, on the college side and also on the union side. There’s no need, in our view, to make this amendment.

**The Chair (Mrs. Linda Jeffrey):** Any further questions or comments?

**Ms. Cheri DiNovo:** Again, recorded vote, please.

**Ayes**

Bailey, DiNovo, Wilson.

**Nays**

Colle, Mitchell, Moridi, Zimmer.

**The Chair (Mrs. Linda Jeffrey):** That’s lost.

We’re on section 8. Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that subsections 8(1) and (2) of the bill be struck out and the following substituted:

“Term of collective agreement

“8(1) Every collective agreement shall,

“(a) provide for a term of operation of not less than one year;

“(b) state that it is effective on and after the 1st day of September in the year in which it is to come into operation; and

“(c) state that it expires on the 31st day of August in the year in which it ceases to operate.”

This is common sense. The school year operates from September until August. Certainly public school systems and staff collective agreements begin September 1 and end August 31. This creates more of a possibility of conflict between bargaining positions and units, the way the bill is constructed. This is in accordance with other accepted labour practices.

**The Chair (Mrs. Linda Jeffrey):** Further comments?

**Mr. Reza Moridi:** The current bill sets out the minimum term for one year. Unlike the previous bill, it doesn’t have a fixed calendar date. The Whitaker report specifically recommended the removal of August 31 as it exists in the current bill. This bill reflects this fact. The parties would have the provision to select their own fixed date. Given the college system, we think that that’s the most appropriate way to go. The parties can have their own date.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Ms. Cheri DiNovo:** This is a request from the union concerned, so clearly it evinces the wishes of the teachers that are involved here, very similarly to the public school system. I don’t see the difference here. It’s a very similar system. We’re dealing with teachers and students. The school year is pretty obvious. It keeps everybody on the same schedule.

Again, I would ask for a recorded vote.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Reza Moridi:** Still, if they wish to have August 31 as their fixed date, they can. It is up to them.

**Ayes**

DiNovo.

**Nays**

Bailey, Colle, Mitchell, Moridi, Wilson, Zimmer.

**The Chair (Mrs. Linda Jeffrey):** That’s lost.

Shall section 8 carry? All those in favour? All those opposed? That’s carried.

Sections 9 through 13 have no amendments. Shall they carry? All those in favour? All those opposed? That’s carried.

Section 14: Who’s reading that motion, the PC motion? Mr. Wilson.

**Mr. Jim Wilson:** We’re going to withdraw that motion because I think the next motion on the same subsection, subsection 14(16), is a government motion that we can agree with and that corrects the same problem.



**The Chair (Mrs. Linda Jeffrey):** Okay, great. The government motion: Mr. Moridi.

**Mr. Reza Moridi:** Madam Chair, may I ask for 20 minutes' recess, please?

**The Chair (Mrs. Linda Jeffrey):** Sure. A 20-minute recess has been asked for.

*The committee recessed from 0946 to 0955.*

**The Chair (Mrs. Linda Jeffrey):** We're back in committee. We're at section 14(6), a government motion. Mr. Moridi.

**Mr. Reza Moridi:** I move that subsection 14(16) of the bill be amended by striking out "and that no party will not be substantially prejudiced"—

**The Chair (Mrs. Linda Jeffrey):** Sorry, Mr. Moridi. I think you're on the wrong one. Want to start again?

**Mr. Reza Moridi:** Yes. I move that the English version of subsection 14(16) of the bill be amended by striking out "and that no party will not be" and substituting "and that no party will be".

**The Chair (Mrs. Linda Jeffrey):** Any comments or questions? Seeing none, all those in favour? It's carried.

The next motion is a Conservative motion. Mr. Wilson.

**Mr. Jim Wilson:** I withdraw that motion.

**The Chair (Mrs. Linda Jeffrey):** That motion has been withdrawn.

The next motion is an NDP motion. Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that subsection 14(18) of the bill be struck out and the following substituted:

"Effect of arbitrator's decision

"(18) The decision of an arbitrator or of an arbitration board is binding,

"(a) on the parties;

"(b) on the employers covered by the collective agreement who are affected by the decision;

"(c) on the employees covered by the collective agreement who are affected by the decision,

"and the parties, employers, council, employee organizations and employees shall do or abstain from doing anything required of them by the decision."

This follows, of course, from the other motions that I've moved.

**The Chair (Mrs. Linda Jeffrey):** Any comments or questions?

**Mr. Reza Moridi:** The point here is that the grievance arbitration decision from one college should be automatically binding on the other 24 colleges. To make such a change would make substantial changes from the existing law that would be strongly opposed by colleges.

The Supreme Court of Canada explicitly addressed this issue in 1981 and found that the grievance arbitration decision in one college does not apply to other colleges. Its reasoning was that while there is central bargaining, grievance arbitration is case-specific and only involves the officials of that college against which the grievance is lodged.

Given the complicated system within the colleges in Ontario—24 colleges and 100 campuses spread all over the province—one case on one campus or in one college

may not be applicable to the others. Therefore, we are opposed to this amendment.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Ms. Cheri DiNovo:** We had a strike in 2006 in the college system that was resolved by binding arbitration. Bill 90 would make that impossible. There's been precedent for binding arbitration and for both parties to consent to binding arbitration. So again, this flows from what we've already done.

Might I say at this point that, generally speaking, Bill 90 takes a step forward. It's a step that we've been hoping to take for a while, which extends, of course, charter rights to part-time and sessional college faculty. But the problem with the bill is that it giveth and it taketh away. We want to make this bill stronger for both the college teachers—all college teachers, who all perform the same job, whether full-time, part-time or sessional—and for the students that they teach. Again, we don't see why they should be separated out in the labour pool from other labour unions and other labour union rights.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Reza Moridi:** As I indicated earlier, given the college system in Ontario, with the large number of campuses and the various conditions, various situations, at each campus and each college things might be different from what the ruling would be if applied to that particular college or that particular campus.

**Ms. Cheri DiNovo:** This has nothing to do with the number of colleges; this has to do with the possibility of having binding arbitration. Whether there are 5,000 colleges or five colleges, what we're asking for here is something that's extended to other unions across the province, which is the possibility of entering into binding arbitration. It's already had historical precedent. So I don't understand the member opposite's comments, because they're not pertinent to this amendment.

Anyway, enough said. Let's vote, and let's have the votes recorded.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Mr. Moridi? No.

#### Ayes

DiNovo.

#### Nays

Colle, Mangat, Mitchell, Moridi, Zimmer, Wilson.

**The Chair (Mrs. Linda Jeffrey):** That vote's lost.

Shall section 14, as amended, carry? All those in favour? All those opposed. That's carried.

There are no amendments to sections 15 and 16. Shall they carry? All in favour? All opposed? That's carried.

Ms. DiNovo, you have the next amendment.

1000

**Ms. Cheri DiNovo:** I move that section 17 of the bill be amended by adding the following subsection:



"Where employees deemed to take part in strike

"(5) Where the employee organization gives notice of a lawful strike, all employees in the bargaining unit concerned shall be deemed to be taking part in the strike from the date on which the strike commences to the date on which the strike ends, and no employee shall be paid salary or benefits during such period."

It's interesting that even the Tories understood that it's very dangerous—this is essentially talking about scabs and anti-scab provisions—to have scabs entering a place of work on college campuses during a strike. It leads to violence. We know that strikes that allow scabs in last longer and, of course, we have the problem of students who are working and students who are taking classes and trying to figure out which is which. Crossing a picket line is always counterproductive. So, again, that's the argument behind this amendment.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Wilson.

**Mr. Jim Wilson:** I just wanted to comment that I'm certainly in favour of this particular amendment and want to know why the government isn't.

**Mr. Reza Moridi:** The Whitaker report specifically removed the deemed strike and deemed lockout provision from this bill. Given that in the college system we have about 5,000 student workers, if one group wants to enter into the college then it's not easy to distinguish whether this particular student is a working student or he or she is just a student. We oppose this amendment.

**Ms. Cheri DiNovo:** You just gave exactly the reasons why we need it in—exactly the reasons why we need it in—because that way we know that the students who are entering are students and not workers, and that all workers are out when they're out. Again, we've got 180,000 students on our college campuses. This could lead to incredible violence.

Again, I note for the record that it's quite wild when the Progressive Conservative Party sees this very clearly and the Liberals do not. Certainly, in other venues the New Democratic Party has tried to pass anti-scab legislation with the McGuinty government to no avail. Here's another classic case where the McGuinty government is in bed with scab labour.

So, again, I definitely want a recorded vote. Every union out there, from CAW to CUPE, should take note of this historic moment.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Mr. Moridi.

**Mr. Reza Moridi:** This provision doesn't exist in any larger organizations, neither in universities. So the college system is not going to be exceptional. It doesn't exist in other places either.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Any further comments or questions? Ms. DiNovo.

**Ms. Cheri DiNovo:** Just to know that forthcoming you'll see what has, of course, happened in the past, which is violence on the picket lines.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

## Ayes

Bailey, DiNovo, Wilson.

## Nays

Colle, Mangat, Mitchell, Zimmer, Moridi.

**The Chair (Mrs. Linda Jeffrey):** That amendment is lost.

Shall section 17 carry? All those in favour? All those opposed? That's carried.

There are no amendments in sections 18, 19 and 20. Shall they carry? All in favour? All opposed? They are carried.

The next motion is yours, Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that section 21 of the bill be amended by adding the following subsection:

"Where lockout deemed

"(4) Where the council gives notice of a lawful lockout, all employers shall be deemed to be taking part in the lockout from the date on which the lockout commences and an employee in the bargaining unit concerned is not entitled to be paid salary and benefits in respect of the days on which the employee is prevented from performing his or her duty as the result of action by an employer under this section."

Again, this follows from the other amendment.

**The Chair (Mrs. Linda Jeffrey):** Any further speakers? Mr. Moridi.

**Mr. Reza Moridi:** Madam Chair, again, similar to the previous case, the Whitaker report specifically recommends that we remove the lockout provision from the bill, and we believe that this will serve the college system and the students much better. Furthermore, the lockout provision doesn't exist in larger organizations, including the universities in the province.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Ms. Cheri DiNovo:** A recorded vote, please.

## Ayes

Bailey, DiNovo, Wilson.

## Nays

Colle, Mangat, Mitchell, Moridi, Zimmer.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

Shall section 21 carry? All those in favour? All those opposed? That's carried.

Sections 22 through 25 have no amendments. Shall they carry? All those in favour? All those opposed? They're carried.

Section 26, government motion. Mr. Moridi.

**Mr. Reza Moridi:** I move that subsection 26(4) of the bill be struck out and the following substituted:

"Timing of application



“(4) The first application under this section that would change the description of or eliminate a bargaining unit described in section 1 or 2 of schedule 1 shall not be made before the later of,

“(a) one year after the day this act receives royal assent, and

“(b) the day after a collective agreement has been executed in respect of the bargaining unit described in section 2 of schedule 1.

“Same

“(4.1) The first application under this section that would change the description of or eliminate a bargaining unit described in section 3 or 4 of schedule 1 shall not be made before the later of,

“(a) one year after the day this act receives royal assent; and

“(b) the day after a collective agreement has been executed in respect of the bargaining unit described in section 4 of schedule 1.”

**The Chair (Mrs. Linda Jeffrey):** Did you want to speak to that motion?

**Mr. Reza Moridi:** Yes. The proposed amendment would address the concern that the requirement for collective agreements to be in place for both part-time units could prevent an application from being made if one of the part-time units never gets organized.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Jim Wilson:** Was this just an oversight from the first draft of the bill?

**Mr. Reza Moridi:** It wasn't the intention of the first draft not to include this, but now we are amending it.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo, did you have a question?

**Ms. Cheri DiNovo:** Yes. We're going to introduce our own amendment; I'm going to vote against this. Really, what we would like to see is that teachers be recognized as teachers; whether they're part-time, full-time, sessional, whatever, they're teachers. So there should be two bargaining units, teachers and support staff, rather than the way that Bill 90 is constructed. That's why we're voting against it.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Jim Wilson:** Perhaps the government could explain in layman's terms what substantial change this makes from the printed bill.

**Mr. Reza Moridi:** This basically reflects Whitaker's intention that one unit, when it gets organized, can make these decisions. It wouldn't need to wait for the other unit to get organized.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Can I just remind you, Mr. Moridi: If you ever want some staff to come up and assist you with your answer, you're welcome to do that if somebody asks you a question you would like some additional help with.

**Mr. Reza Moridi:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Okay. So this is a government motion.

**Mr. Mike Colle:** A recorded vote, please.

### Ayes

Colle, Mangat, Mitchell, Moridi, Zimmer.

### Nays

Bailey, Wilson.

**The Chair (Mrs. Linda Jeffrey):** That's carried.

Ms. DiNovo, you have the next motion.

**Ms. Cheri DiNovo:** I move that section 26 of the bill be struck out and the following substituted:

“Application re bargaining units

“26.(1) The council, the bargaining agent for a bargaining unit or an employee organization that has applied to be certified as the bargaining agent for a bargaining unit may apply to the Ontario Labour Relations Board proposing,

“(a) changes in the description of bargaining units;

“(b) the establishment of bargaining units;

“(c) the elimination of bargaining units.

“Same

“(2) The applicants shall set out the details of the proposal in the application.

“Same

“(3) The parties to the application shall include,

“(a) the council;

“(b) the bargaining agent for any bargaining unit that would be affected by the proposal; and

“(c) an employee organization that has applied to be certified as the bargaining agent for a bargaining unit that would be affected by the proposal.

“Timing of application

“(4) The first application under this section shall not be made before the later of,

“(a) one year after the day this act receives royal assent; and

“(b) the day after a collective agreement has been executed in respect of each of the bargaining units that would be affected if the proposal were implemented.”

I think I spoke to this.

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**The Chair (Mrs. Linda Jeffrey):** Any further discussion?

**Mr. Reza Moridi:** The Whitaker report specifically recommended a joint application in order to provide stability and prevent having the attempt to change bargaining unit descriptions to be used as a lever in bargaining.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Ms. Cheri DiNovo:** Again, we think there are teachers and support staff, and we think there should be two bargaining units.



**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Mr. Moridi?

**Mr. Reza Moridi:** No, thank you.

**The Chair (Mrs. Linda Jeffrey):** All those in favour of the motion? All those opposed? That's lost.

Shall section—Ms. DiNovo.

**Ms. Cheri DiNovo:** Sorry. I hope it's not too late to have a recorded vote.

**The Chair (Mrs. Linda Jeffrey):** It's too late. You can catch me at the beginning, but after it's done, I can't.

Shall section 26, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 27 through 29 have no amendments. All those in favour of those sections? All those opposed? That's carried.

Mr. Wilson, you have the next motion.

**Mr. Jim Wilson:** I move that subsection 30(1) of the bill be amended by striking out "35 per cent" and substituting "40 per cent".

I think it's self-evident.

**The Chair (Mrs. Linda Jeffrey):** Any further questions?

**Mr. Reza Moridi:** The Whitaker report specifically recommends a 35% membership support threshold for college workers, based on the idea that the college system consists of 24 colleges and over 100 campuses, and that gives more opportunity for workers to get unionized. After all, there will be a democratically voted system based on majority voting at the end.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Ms. Cheri DiNovo:** The New Democratic Party supports card-check certification. We put this forward in another bill at another time. But certainly, between 35% and 40%, should we choose, we'd prefer the 35%. We'll be voting against this.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Committee, just so you know, there's a numbering error, so we're going to number 7 first and then we'll be coming back to number 6 in the next section.

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** It's motion 7. We're going from five to seven, just so you're following. I have a different road map, so I want to make sure we're on the same page.

Mr. Wilson.

**Mr. Jim Wilson:** I didn't get the NDP amendments until moments ago. We're doing seven?

**The Chair (Mrs. Linda Jeffrey):** Yep.

**Mr. Jim Wilson:** I move that subsections 30(1), (2) and (3) of the bill be struck out and the following substituted:

"Representation vote

"(1) If the Ontario Labour Relations Board is satisfied, based on evidence, that 35 per cent or more of the individuals in the bargaining unit referred to in the application for certification are members of the employee

organization at the time the application was filed, the board shall direct that a representation vote be taken among the individuals in the voting constituency.

"Hearing

"(2) The board may hold a hearing when making a decision under subsection (1)."

I just think it gives more discretion to the board and clarifies this section.

**The Chair (Mrs. Linda Jeffrey):** Any further comments?

**Mr. Reza Moridi:** Such challenges are not permitted under the Labour Relations Act, and we believe that allowing such challenges could lead to delays in the decision-making. Also, it will introduce litigation when a union applies for certification. After all, Bill 90, like the Labour Relations Act, would always require a union to win majority support on a secret ballot vote before they could be certified.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Ms. Cheri DiNovo:** Of course, we think that without card-check certification, at least the vote should be in a timely manner within 14 days and made as fluid as possible, so we're going to vote against this.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

The next motion is a government motion. This is number 8.

**Mrs. Carol Mitchell:** We're going to motion 8 now?

**The Chair (Mrs. Linda Jeffrey):** Yes. When we get back on track, I'll tell you, but we're not there yet.

**Mrs. Carol Mitchell:** That's fine.

**Mr. Reza Moridi:** I move that subsection 30(4) of the bill be struck out and the following substituted:

"Timing of vote

"(4) The representation vote shall be held in a timely manner, within a time period determined by the board."

**The Chair (Mrs. Linda Jeffrey):** Any comments or questions? Ms. DiNovo.

**Ms. Cheri DiNovo:** Yes, we think that "timely manner" means within 14 days, so we will be voting against this.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Mr. Moridi.

**Mr. Reza Moridi:** We think that putting it at a strict 14 days or any date is not appropriate. We leave it for the parties to decide.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** Clearly, one party has decided and would like to see it in a more timely manner, and that is the union representing the teachers. So we would certainly side with them. Clearly, the longer it goes, the more open to intimidation and undoing of the good work of the union is possible, so again, "a timely manner" means a timely manner: Within 14 days should be possible.

**The Chair (Mrs. Linda Jeffrey):** Mr. Moridi.



**Mr. Reza Moridi:** The “timely manner” is within the time period determined in the bill.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Ms. DiNovo, you have the next motion, 8.1.

**Ms. Cheri DiNovo:** I move that subsections 30(4) and (5) of the bill be struck out and the following substituted:

“Timing of vote

“(4) Subject to subsection (5), the representation vote shall be held within 14 days (excluding Saturdays, Sundays and holidays) after the day on which the application for certification is filed with the board.

“Same

“(5) The board may order that the vote shall be held during a time period specified by the board that is later than the time period determined under subsection (4) if the board considers that holding the vote within the time period determined under subsection (4) would cause the vote to be held during a time period when the persons eligible to participate in the vote are not substantially representative of persons likely to be substantially affected by the result of the vote.”

Again, I want to mention that we really would like to see card-check certification to avoid this, but since we’re dealing with this, and since the Liberal government under Dalton McGuinty is not in favour of card-check certification, this is as good as it’s going to get, and we would like to see this amendment put forward.

**The Chair (Mrs. Linda Jeffrey):** Mr. Moridi.

**Mr. Reza Moridi:** Imposing a 14-day time limit is going to remove the flexibility from both parties, so we are opposed to that. We would like both parties to have flexibility in setting out their time within the period stated in the bill.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** In this amendment there’s a provision allowing for some flexibility, but clearly, on the government side they would like to retain flexibility for the employer and not for the employee in this instance. I want to make that very clear and I want a recorded vote on this, please.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That’s lost.

Shall section 30, as amended, carry? All those in favour? All those opposed? That’s carried.

Now we’re going back to 6, and that’s Mr. Wilson.

**Mr. Jim Wilson:** I move that subsection 31(3) of the bill be struck out.

Colleges Ontario, when they appeared before this committee, indicated it might be unrealistic for them to have an accurate part-time employees list available within the requirement of the bill as printed. So this would give the board some flexibility to set a timeline, and when the accurate lists could be completed.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Mr. Moridi.

**Mr. Reza Moridi:** This two-day rule is based on the Labour Relations Act and it applies to all employers, including very large employers like universities and others. We believe that the colleges, the employer, would have the list of their employees, so two days should be quite adequate for them to come up with that number and the list.

**The Chair (Mrs. Linda Jeffrey):** Mr. Wilson.

**Mr. Jim Wilson:** Well, perhaps to their embarrassment, they testified otherwise and said they may not have an accurate list. I think they were just trying to abide by the spirit of the law and be able to go and ask the board for some flexibility. After all, a lot of your arguments are based on the fact that there are so many colleges and just slightly over 100 campuses, and they just maybe need a few more days to make sure that those who are voting are actually employees.

1020

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Reza Moridi:** I think their payroll list would be a good way to start. Everybody on the college employee list should be on the payroll list. That should be adequate. Within two days, they should be able to pull out the list.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Ms. DiNovo.

**Ms. Cheri DiNovo:** We in the New Democratic Party will be voting against this. It seems that the Liberal Party and the Progressive Conservatives are all about flexibility for the employer and not for the employee, so we will be voting against this.

**The Chair (Mrs. Linda Jeffrey):** Mr. Wilson, did you want to speak again?

**Mr. Jim Wilson:** No.

**The Chair (Mrs. Linda Jeffrey):** Okay. Any further questions or comments? All those in favour of the motion? All those opposed? That’s lost.

Shall section 31 carry? All those in favour? All those opposed? That’s carried.

Between sections 32 to 48, there are no amendments. Shall they carry? All in favour? All opposed? That’s carried.

We’re at section 48.1. Ms. DiNovo, motion 8.2.

**Mr. Mike Colle:** Which one is it?

**Ms. Cheri DiNovo:** It’s 48.1, the section we’re dealing with now, right?

**The Chair (Mrs. Linda Jeffrey):** Yes.

**Ms. Cheri DiNovo:** I move that the bill be amended by adding the following sections at the end of part V:

“Successor Rights and Related Employers

“Declaration of successor union

“48.1 Section 68 of the Labour Relations Act, 1995 applies with necessary modifications with respect to this act.

“Successor employer

“48.2 Section 69 of the Labour Relations Act, 1995 applies with necessary modifications with respect to this act.

“Related employer



“48.3 Subsections 1(4) and (5) of the Labour Relations Act, 1995 apply with necessary modifications with respect to this act.”

This deals with a very fundamental principle of organized labour, and that's successor rights and related employer provisions. It's astounding to us in the New Democratic Party that that's not part of Bill 90, if this was in fact put in place to protect part-time and sessional teachers. By the way, I want to correct for Hansard: When I talked about support staff, I should have mentioned part-time support staff too.

In 2006, the McGuinty government restored successor rights to crown employees. This was a major promise of the 2003 election from Dalton McGuinty. Now here they are, not instating successor rights for college teachers. Why is that? Certainly this is the foundation that, if somebody moves from one employer to another employer and does the same job, they have the same rights. We're kind of gobsmacked in the New Democratic Party that the McGuinty government would make a distinction between crown employees and teachers here.

**The Chair (Mrs. Linda Jeffrey):** Mr. Moridi.

**Mr. Reza Moridi:** The Whitaker report did not make any specific recommendations to enforce such provisions in the bill. The Labour Relations Act successor right provisions apply to businesses or undertakings when they are sold or transferred. When it comes to the college system, the core business of the college system is education and training, and this business is legislated and is not going to be transferred or sold to anyone else.

While there are other businesses within the college system, for example, running the parking lot or bookstores, those operations can always be contracted out, and this bill of course wouldn't apply to them.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** It's interesting that my colleague across the way talks about contracting out. When the Tories took away successor rights it was in the interests of privatization across the province. Surely the McGuinty Liberals aren't interested in pursuing the same agenda as the Progressive Conservatives under Harris. We hope that they step up to the plate here on behalf of some of the most valued employees across the province and their students, do what's right and really enshrine successor rights here for the folks whom we're talking about in this bill, Bill 90.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Sections 49 through 71 have no amendments. Shall they carry? That's carried.

Our next motion is Ms. DiNovo's.

**Ms. Cheri DiNovo:** I move that section 72 of the bill be amended by adding “or the council” after “employee organization”.

This is about fairness and clarity. We just want to ensure that that the council has the same duties and responsibilities under the act as do employee organizations.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Reza Moridi:** Under the Labour Relations Act, this exists because employee associations are private organizations and the information regarding bylaws, officers and persons authorized to accept notices is not always publicly available. The employers' council will be established by statutes with the functions established in those statutes.

As well, given that the board is composed of members of college boards, it's likely that all information regarding the council would be accessible under the FOIPPA.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Ms. Cheri DiNovo:** Again, this is about an even playing field. This is about ensuring that we have two negotiating partners with the same rights and responsibilities. Again, we see the government falling on the side of the employer here.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 72 carry? All those in favour? All those opposed? That's carried.

There are no amendments for section 73. Shall it carry? All those in favour? All those opposed? That's carried.

Section 74, Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that section 74 of the bill be struck out and the following substituted:

“Representative for service of process

“74. Every employee organization that represents employees or applies to represent employees under this act and the council shall file with the Ontario Labour Relations Board a notice giving the name and address of a person in Ontario who is authorized by the employee organization or the council, as the case may be, to accept on its behalf service of process and notices under this act, and service on the person named in such notice is good and sufficient service for the purposes of this act on the employee organization or the council that filed the notice.”

It follows from the previous.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Reza Moridi:** Again, here, under the Labour Relations Act, this exists because employee associations are private organizations and the information regarding bylaws, officers and persons authorized to accept notices is not always publicly available. The employers' council will be established by statutes with its functions established in those statutes.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? All those in favour of the motion? All those opposed? That's lost.

Shall section 74 carry? All those in favour? All those opposed? That's carried.

Ms. DiNovo, you have the next motion.



**Ms. Cheri DiNovo:** I move that the bill be amended by adding the following section:

“Good faith representation by council

“74.1 The council shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employer.”

Again, what’s good for the goose is good for the gander, keeping the negotiating field level and bargaining in good faith—it’s a pretty straightforward amendment.

**The Chair (Mrs. Linda Jeffrey):** Any further questions?

**Mr. Reza Moridi:** The proposed amendment by the NDP would provide a duty of fair representation that applies to unions under the Labour Relations Act and Bill 90. The relevance or need for such an amendment is not evident here. All colleges would be represented on the council’s board of directors and would have a say in its governance and operations.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, shall section 74.1 carry? All those in favour? All those opposed? That’s lost.

Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that the bill be amended by adding the following section:

“Accountability of council

“74.2(1) The council, the employers and the Minister of Training, Colleges and Universities shall make every reasonable effort to negotiate a memorandum of understanding setting out the means by which the council will report on its activities to the minister.

“Same

“(2) The minister may require the council to provide such reports as the minister considers advisable in respect of the council’s activities and the council shall comply with the requirement.”

1030

Again, it’s a level playing field, and again, it’s government oversight. A lot of taxpayer dollars go into this particular employer, so it’s an employer unlike some other employers in the private sector. We think government should be present and that government should provide oversight of this process.

**The Chair (Mrs. Linda Jeffrey):** Mr. Moridi.

**Mr. Reza Moridi:** The proposed amendment would in effect make the council accountable to the minister for the way it carries out its collective bargaining role under the act. This would be inappropriate, because the minister is not a party to college collective bargaining.

It’s important to remember that even though the current council is a government agency, its mandate is to act at arm’s length from the government in the matter of labour negotiations and it’s not accountable to the minister for this aspect of its role. The proposed amendment would also be contrary to the Whitaker report, which specifically recommended setting up a separate employer bargaining association within the control and direction of the colleges themselves.

**The Chair (Mrs. Linda Jeffrey):** Mr. Wilson.

**Mr. Jim Wilson:** I don’t disagree with what the parliamentary assistant has just said, but perhaps for the record we could either ask the parliamentary assistant or staff to just give us a general oversight in terms of how the council is accountable to the government and the taxpayer.

**The Chair (Mrs. Linda Jeffrey):** Mr. Moridi, are you comfortable answering that, or would you like some assistance?

**Mr. Reza Moridi:** Yes. The council board of directors will be composed of the chair of the board of governors of every college and also the presidents of the college. So through this arm’s-length organization, accountability will be exercised.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** For the record, that’s a pretty bureaucratic answer over there. Hence, we have the highest student fees in Canada, just about the highest student debt in Canada and no relief in sight, and a government that steps away from the entire process, either teachers’ rights or students’ rights, here. Again, I’d like a recorded vote on this. This is a government that’s not upholding its end of the responsibility to make sure that education is a fundamental human right in the province of Ontario.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

Ayes

DiNovo.

Nays

Bailey, Colle, Mangat, Mitchell, Moridi, Wilson, Zimmer.

**The Chair (Mrs. Linda Jeffrey):** That’s lost.

There are no amendments to sections 75 or 76. Shall they carry? All in favour? All opposed? That’s carried.

The next motion is a government motion. Mr. Moridi.

**Mr. Reza Moridi:** I move that the bill be amended by adding the following section:

“Declaration of successor union

“76.1 Section 68 of the Labour Relations Act, 1995 applies with necessary modifications with respect to representation rights under this act.”

The proposed amendment would incorporate section 68 of the Labour Relations Act to deal with unions’ success of rights if unions merge or amalgamate and would allow the Ontario Labour Relations Board to make a declaration that the new union is the successor to the previous union, so that that union doesn’t lose its bargaining rights.

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Ms. DiNovo.

**Ms. Cheri DiNovo:** Yes, I’m going to be supporting this; it’s better than nothing. We’d like to also see section 69 of the Labour Relations Act with respect to successive



employer rights as well. But we're going to be voting for this and we're glad to see that the government has taken some of our lead on this.

**Mr. Reza Moridi:** Thank you.

**Mr. Mike Colle:** A recorded vote, please.

### Ayes

Bailey, Colle, DiNovo, Mangat, Mitchell, Moridi, Wilson, Zimmer.

**The Chair (Mrs. Linda Jeffrey):** A unanimous carry. Terrific.

Section 77, there are no amendments; shall the section carry? All those in favour? All those opposed? That's carried.

The next motion is yours, Ms. DiNovo.

**Ms. Cheri DiNovo:** I move that the bill be amended by adding the following section:

"Duties of OLRB

"77.1 The Ontario Labour Relations Board shall,

"(a) compile statistical information on the supply, distribution, professional activities and salaries of employees; and

"(b) advise the Lieutenant Governor in Council when, in the opinion of the board, the continuance of a strike, lockout or closing of a college or colleges will place in jeopardy the successful completion of courses of study by the students affected by the strike, lockout or closing of the college or colleges."

This just ensures that the two most useful functions of the former college relations committee under the old CCBA are carried over. This helped, of course, to shorten strike times when the public was aware of how the strike and how the actions of the employer in this instance were impacting students, faculty and, of course, the public.

**The Chair (Mrs. Linda Jeffrey):** Further debate?

**Mr. Jim Wilson:** Could we just go over, from the government side, how jeopardy is going to be dealt with under the new act?

**Mr. Reza Moridi:** The Whitaker report specifically recommended that the jeopardy advice function be removed from the act. Removing this safety net, which lets the parties avoid taking responsibility themselves for the serious consequences of a strike, would be one more factor to encourage the parties to remain at the bargaining table. There's no jeopardy advice function in the university sector, as we know. After all, a government can introduce back-to-work legislation at any time if it considers that the public interest is in jeopardy. So there is a provision there: The government can always bring back-to-work legislation if needed.

**Mr. Jim Wilson:** I don't really understand why you wouldn't want jeopardy provisions in there. They're certainly in there for elementary and secondary schools. It gives cabinet an excuse to order the parties back to work. So it's a bit of a mystery to me. It was a nice crutch in the past, in my eight years in government. Also, it's ulti-

mately about the students and whether their year or semester is in jeopardy or not.

**Ms. Cheri DiNovo:** Absolutely. Really, we're talking about the principle of transparency here, the public's right to know. I don't understand why the government wouldn't want the public to know what's happening and how it affects the students and the teachers and the public.

**Mr. Reza Moridi:** Madam Chair, may I consult with my staff, please?

**The Chair (Mrs. Linda Jeffrey):** Sure.

As you sit down, could you introduce yourself for the committee?

**Mrs. Carol Mitchell:** I just wanted to make a short comment. This is about accountability, it's about transparency. We understand how important post-secondary education is for the future of our children. We have made significant investments, and this is just another piece of it. I certainly welcome the input, but I just wanted to reinforce to all of the members of the committee how important this is to our government because it's about the future.

**The Chair (Mrs. Linda Jeffrey):** Thank you.

Good morning.

**Ms. Elisabeth Scarff:** Good morning. My name is Elisabeth Scarff. I'm legal counsel with the Ministry of Training, Colleges and Universities.

The question was—I'm sorry; Mr. Wilson, can you repeat the original question?

**Mr. Jim Wilson:** Yes. The motion deals with jeopardy, in terms of it's not going to be in the new act. To me, in the past, it was a handy tool and a good indicator to government of when you should order the parties back to work.

**Ms. Elisabeth Scarff:** I don't know if it's my role to comment on the rationale. It was more like, how would the government know jeopardy is going to be there? It would be in the same manner, essentially, as happens now, in any event, by which colleges advise the College Relations Commission—and presumably would advise the government—as to when colleges would no longer be able to make up for academic years if a strike continued, which is essentially what happens now. Colleges decide at what point practically, if a strike continued, they couldn't compress academic years or provide alternate means for the students to complete their programs within the time frame. That information presumably would still be forthcoming to the government, and the government would then have before it the same decisions as it has now when that information is provided to the College Relations Commission, because even under the current system, it is still the government that decides what to do with the information.

1040

**Mr. Jim Wilson:** I guess it's the word "presumably," that presumably they'll report. Is there anything wrong with the NDP amendment in terms of requiring them to report?

**Mr. Reza Moridi:** We don't have this clause for the universities, which are similar to colleges in terms of



their function as far as the school year goes, so there's really no need to have this clause put into the bill, though the government always has the authority to bring back to work legislation once it feels that the interests of the students are in jeopardy.

**Ms. Cheri DiNovo:** Yes. We just want to ensure that you do. We just want to ensure that we have access to that information, not only members of government, but that members of the public have access to what's going on during a strike.

Also, the other part of this amendment—and I don't want to skip over it—is about “the supply, distribution, professional activities and salaries of employees,” because right now in the college system we have part-time employees and sessional employees who are making a great deal less than their permanent counterparts doing the same job. We think, again, that the public has a right to know that their college professors are making less than they do if they're working at Starbucks on occasion. That's a pretty telling statistic. We want access to that kind of information. We want the public to have access to that kind of information and think that this needs to be in this act because we're frightened, of course—otherwise we wouldn't make this amendment—that we won't be able to get our hands on it. So if the government has nothing to hide, if they plan on making this information public anyway, what's the harm in passing this amendment that just asks that it be so?

**The Chair (Mrs. Linda Jeffrey):** Any further debate? Mr. Colle.

**Mr. Mike Colle:** Just to note that the Whitaker report recommended specifically on deleting the jeopardy advice from this board called the College Relations Commission, so it puts more onus on the government and it puts more onus on the bargaining agents and the colleges to essentially take their full responsibility and make them more mature, rather than setting up this nameless, faceless College Relations Commission of which none of us know who the members are or what they do. It really demonstrates the government's acknowledgment of the maturity of the colleges sector and also the fact that Whitaker is very clear: He feels it's better that this be taken out, and the universities have never had it. So it seems to make pretty common sense, eminent sense, that this is the way to go. Are the NDP going to argue with Kevin Whitaker's report and his esteemed advice?

**Ms. Cheri DiNovo:** With all respect to Mr. Whitaker, what we're here to defend are the rights of the students and the rights of the faculty—part-time and sessional faculty—and all employees of the college system—part-time, full-time support workers as well—but particularly we know that there's this trend, which is marked, in the United States. The whole point of this bill, in effect, we hope, is to bring back rights that have been taken away, that are charter rights, I would argue, for faculty who are doing the same job—the same job—as their full-time counterparts and getting paid way less. In fact, until this bill is passed, they don't even have the right to form a union. That's what this exercise is about today. We fool

ourselves if we think that this is a trend that's not going to continue and grow. It's sad that they don't do this at the university level. If you look at the Americans to the south of us, you see that some universities have way more faculty who are on contract and part-time than are full-time, and, guess what, they could lose their jobs at any moment, they have no rights. Any of the crown employees who are sitting in this room who are part of a union, part of OPSEU possibly, the very union that we're arguing for in this plank, will understand that. Here you have people with Ph.D.s and many of them are making less per hour, by the time they count grading papers, doing all the work they do, than the students sitting in front of them in the classes. Is that ethical? Is that right? Is that just? We in the NDP say absolutely not. Mr. Whitaker aside, that's what we're here to fight for.

**Mr. Reza Moridi:** Specifically for that reason, our government has made a commitment and a policy decision in our last mandate to look into this issue of bargaining rights for part-time workers and part-time academics in our college system. That's why our government requested Kevin Whitaker to review the whole system from A to Z and come up with a report, which he did. He presented his report in February with 17 recommendations. As a government, we accepted all his recommendations and we built them into the bill. This bill which is before you is based on Whitaker's very thorough review. He actually conducted lots of consultations with stakeholders, and we also conducted hearings last week here. So these are the amendments we are going to make today, and the bill will be presented to the House.

**Ms. Cheri DiNovo:** Just to get back to this one particular little amendment, all we're asking for in it is transparency and the ability to get our hands on facts and figures that would aid and abet the educational system in Ontario.

**Mr. Mike Colle:** Just about transparency again, what Mr. Whitaker is recommending and our government is supporting is that you don't put in this nameless, faceless third party here, this nebulous College Relations Commission, and you give more power, more recognition, to the union and to the colleges directly upfront in the bargaining process. You talk about transparency. This is much more transparent and that's why Kevin Whitaker has recommended this.

The NDP never brought forward this kind of bill that gives bargaining rights to temporary college workers when they were in power. We're doing it. It's a commitment that we made and we're doing it, because the NDP never did it when they were in power. It's long overdue, and it's proceeding on the basis of the advice of one of North America's foremost labour relations experts, Mr. Whitaker. It's a great step forward in transparency, responsibility and taking a very balanced approach in ensuring that the rights of the students, first of all, across our great colleges are appreciated and also the rights of the workers—the professors, the part-time workers. They're now going to get extra rights to bargain when they're part-time, because we know that there's a



growing number of part-time teachers and workers in the college system. That's why this bill is very appropriate, and I can't see why the NDP is arguing against that, when they've been asking for it and never did it. It's kind of trying to have it both ways. We're doing it.

**Ms. Cheri DiNovo:** I think that Mr. Colle refers to the former government of Bob Rae, who I gather has something else going on in his life now, as he was then a Liberal. So I'm not here to defend the actions of a Liberal.

What I'm here to do in this amendment is simply—we're not arguing for the old College Relations Commission and we're not arguing against Bill 90. What we're talking about is a little amendment that's simply asking for some more transparency. This is a function that was a good thing to carry over. We're not saying that everything is a good thing to carry over; we're simply saying that all we want is to be able to get our hands on statistical information and to understand when the students are at risk, in jeopardy, of losing their year. This is a very simple thing that I think everybody in the public would want to know. That's it; we're not arguing about anything larger with this amendment, just that.

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**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Mr. Moridi.

**Mr. Reza Moridi:** No comments.

**The Chair (Mrs. Linda Jeffrey):** Mr. Colle.

**Mr. Mike Colle:** Again, transparency is enhanced when you get rid of the NDP's College Relations Commission, which they want to hold onto. Why? I don't know. Let the parties decide in good faith what they hope to achieve in a clear, transparent way. Why the NDP wants this middle group in there, basically clouding the issue, is beyond me. And they talk about their government: Well, it wasn't just one man in that government. All the members of the NDP cabinet had five years to introduce this legislation. They sat on their hands and did nothing. We are doing something.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Ms. DiNovo, are you indicating you want to speak?

**Ms. Cheri DiNovo:** Sure, why not? First of all, absolutely we're in favour of bargaining rights for part-time workers; absolutely, we're in favour of that. What we're trying to do here is to make this bill stronger, not make it weaker. That's what we're doing in this room at this time. Did I say that I wanted the College Relations Commission back? Did we say—no. What we said is we want more transparency in reporting. That's all this amendment calls for: more transparency in reporting.

Certainly, if we're going to discuss or debate the powers of the Premier's office, I'm sure that Mr. Zimmer would like to have some words about that, and other members of the Liberal caucus who would like to have seen some of their bills passed that didn't get passed. We know that there are huge amounts of power in the Premier's office. Some of us wish that weren't so. Mr. McGuinty promised that it would not be so under his leadership. It certainly was so under Bob Rae; it certainly

is under Dalton McGuinty. We certainly have had that concentration of power in the Premier's office with two Liberal premiers.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Mr. Colle.

**Mr. Mike Colle:** Yes. Again, to state on the record clearly that Mr. Whitaker in his report, probably one of the most comprehensive reports in this whole area of collective bargaining in the colleges, has produced a very astute series of recommendations which the NDP, in this case, are opposing because they want to see this nebulous, no-name College Relations Commission. And I challenge the NDP to name me who's on that commission, but they want to keep that commission to muddy the waters, whereas Mr. Whitaker and our government are saying that we have two mature sides.

We've got the colleges' association; we have the labour unions, OPSEU or whoever may want to represent the part-time workers or the professors at the colleges. They're capable of resolving some of these issues even before it goes the final step. That's what Mr. Whitaker has recommended in his report all along. He respects their growing maturity as bargaining agents or as a college association because for too many years, there wasn't enough attention given to our incredibly successful colleges and all the wonderful institutes that make up our college system.

That's why our government has taken the time to put forward this legislation, because it's not just an afterthought. Our colleges are fundamental parts of our post-secondary education system. They are one of the reasons why Ontario leads, I think, in Canada. It's not just what the Liberals have done; our colleges system, set up by Bill Davis, is a real credit to Ontario. This is a step in that tradition in Ontario, and that is why we didn't sit on our hands like the NDP, when they had a chance to do this and did nothing but talked about it. Shame on them.

**The Chair (Mrs. Linda Jeffrey):** Mr. Colle, can I ask you to speak to the NDP motion, please? And any future discussion—

**Mr. Mike Colle:** The NDP motion basically says they want to keep the status quo and have this colleges commission in place, whereas we are saying to vote with the Whitaker report and this new bill, which is a great breakthrough for part-time workers in our colleges.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** Actually, I draw the member's attention to the NDP motion. It doesn't mention the College Relations Commission at all. What it does ask is that the statistical information on the supply, distribution, professional activities and salaries of employees be made public and that the jeopardy of students losing their school year be made public. That's all it asks for in this little amendment.

Madam Chair, in the interest of brevity, I'd call the question on this.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Shall section 77.1 carry? All those in favour? All those opposed? That's lost.



No amendments in sections 78 through 80. Shall those sections carry? All those in favour? All those opposed? That's carried.

**Ms. Cheri DiNovo:** I move that subsection 81(5) of the bill be struck out and the following substituted:

"Notice of desire to negotiate under predecessor act

"(5) Where, before the day this act receives royal assent, the council or an employee organization gave written notice of its desire to negotiate under subsection 4(1) of the Colleges Collective Bargaining Act with respect to a bargaining unit within the meaning of that act, the Colleges Collective Bargaining Act applies in relation to collective negotiations between the council and the employee organization with respect to the bargaining unit as if that act had not been repealed until the day on which a new collective agreement between the council and the employee organization with respect to the bargaining unit is executed."

What we're asking for here is transitional protection for all the good work that OPSECAAT has done in signing up, I believe, 7,000 members before April who want to be members of a bargaining unit. That preceded Bill 90, so we want to make sure that they don't have to do all that good work all over again.

**The Chair (Mrs. Linda Jeffrey):** Any questions? Mr. Moridi.

**Mr. Reza Moridi:** Madam Chair, if a notice of bargaining is given under the current act before Bill 90 receives royal assent, the current act would continue to apply to such bargaining until a new collective agreement is executed or one year after royal assent, whichever comes earlier. That's what it is in the bill, and we believe this is quite adequate to address that concern.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, shall the amendment carry? All those in favour? All those opposed? That's lost.

Ms. DiNovo.

**Ms. Cheri DiNovo:** Section 81.1 of the bill: I move that the bill be amended by adding the following section:

"Special process, representation vote

"81.1 (1)—

**The Chair (Mrs. Linda Jeffrey):** Can I stop you for just one second, please? I'm sorry, I have to go back. I missed section 81; it's not you.

Shall section 81 carry? All those in favour? All those opposed? That's carried.

Sorry, I missed some housekeeping as we went along. Now you can begin again, if you don't mind.

**Ms. Cheri DiNovo:** I move that the bill be amended by adding the following section:

"Special process, representation vote

"81.1 (1) Despite sections 29 to 43, but subject to subsection (19) of this section, the process set out in this section may be used during the three year period beginning on the day this act receives royal assent, by the employee organization that is deemed under subsection 81(1) to be certified as the bargaining agent for the

members of the bargaining units described in sections 1 and 3 of schedule 1.

"Application

"(2) The employee organization may apply in writing to the Ontario Labour Relations Board for a representation vote in respect of a bargaining unit described in section 2 or 4 of schedule 1.

"Notice to council

"(3) The employee organization shall deliver a copy of the application for a representation vote to the council by the time required under the rules made by the board and, if there is no rule, not later than the day on which the application is filed with the board.

"Contents of application

"(4) The application shall include,

"(a) an estimate of the number of individuals in the bargaining unit in respect of which the application is made; and;

"(b) a proposed time period for the holding of the representation vote.

"Response of council

"(5) On receiving the application, the council shall,

"(a) provide to the employee organization and to the board, in writing, its response to the application; and

"(b) provide to the employee organization, in writing, a list of the individuals who are members of the bargaining unit in respect of which the application is made, together with the work location and classification of those individuals.

1100

"Timing of vote

"(6) Subject to subsection (7), the board shall order that a representation vote be held during the period proposed in the application.

"Same

"(7) The board may order that the vote be held during a different time if the board considers that holding the vote within the time period proposed in the application would cause the vote to be held during a time period when the persons eligible to participate in the vote are not substantially representative of persons likely to be substantially affected by the result of the vote.

"Conduct of vote

"(8) The representation vote shall be a vote by secret ballot conducted under the supervision of and in the manner determined by the board.

"Sealing of ballot box, etc.

"(9) The board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the board directs.

"Subsequent hearing

"(10) After the representation vote has been taken, the board may hold a hearing if the board considers it necessary in order to make a decision respecting certification of the employee organization as bargaining agent for the members of the bargaining unit.

"Certification after representation vote

"(11) The board shall certify the employee organization as the bargaining agent for the members of the



bargaining unit if more than 50% of the ballots cast in the representation vote are cast in favour of the employee organization.

“No certification

“(12) The board shall not certify the employee organization as bargaining agent for the members of the bargaining unit if 50% or less of the ballots cast in the representation vote are cast in favour of the employee organization.

“Bar to reapplying under this section

“(13) If, following an application under this section by the employee organization in respect of a bargaining unit, the board does not certify the employee organization as bargaining agent for the members of the bargaining unit, the board shall not accept another application under this section by the employee organization in respect of the bargaining unit.

“Direction to council for information

“(14) On the application of the employee organization in respect of a bargaining unit, the board shall direct the council to provide the information referred to in subsection (16) to the board and to the employee organization.

“Same

“(15) An application under subsection (14) may be made twice in every 12-month period during the three-year period referred to in subsection (1).

“Same

“(16) On receiving a direction under subsection (14) in respect of a bargaining unit, the council shall provide the employee organization and the board with the following information respecting each member of the bargaining unit:

“1. Name.

“2. Contact information, including, if known, phone number and email address;

“3. College and department or branch in which the member is employed.

“4. Duration of the member's employment by the college.

“5. Whether or not the member is a student at a college.

“Interference by council, etc.

“(17) The council, an employer or any person acting on behalf of the council or an employer shall not interfere in any way with the ability of members of a bargaining unit to exercise their choice in a representation vote.

“Access to places of work

“(18) The council, an employer and persons acting on behalf of the council or an employer shall allow representatives of the employee organization reasonable access to the places where members of the bargaining unit in respect of which an application is made work for the purpose of,

“(a) informing, outside a member's working hours, the member about the representation vote; and

“(b) attempting, outside a member's working hours, to persuade the member to vote in favour of representation by the employee organization.

“Application of certain provisions

“(19) Sections 33 to 35 and section 37 apply, with necessary modifications, in respect of a process under this section.”

Again, I bring this committee's attention to the fact that there has been a great deal of hard work. This expands on the last amendment. In terms of signing up those employees, faculty, who would want to be part of a union, this goes into detail about how that would be made possible and asks that this could be able to trigger a certification vote without having to go back again and do it. This, of course, recognizes the democratic rights, which I think Bill 90 is trying to enshrine, of those faculty to do what they intended to do.

I've heard from the parliamentary assistant. I'm hoping, after all of that reading, that they pass this amendment. I fear that they will not, and if they do not, I'm hoping that the government bargains in itself in good faith with all that good work that the unions have done and allows this particular vote to go ahead.

**Mr. Reza Moridi:** The proposed amendment would give OPSEU a one-time opportunity to trigger a representation vote, while Bill 90 provides a certification process that would allow a union, including OPSEU, to seek a representation vote if it has the requisite membership support. The proposed amendment doesn't explicitly refer to the cards that OPSEU filed in its April 2008 application, but one would assume that it wants those cards to apply, since there's no reference in the proposal to filing new cards.

**Mr. Jim Wilson:** Perhaps staff could take us through this amendment and tell us what the effect would be, in terms of the amendment versus the bill as written?

**The Chair (Mrs. Linda Jeffrey):** Okay. Do we have some leg counsel? Will they help us with that?

**Ms. Mariam Leitman:** This is, obviously, an NDP motion. What it provides for is a special process during the three-year period following royal assent for the bargaining agent that represents the full-time academics and full-time support staff at colleges to have a kind of expedited process for being certified as the bargaining agent for the new part-time units. Obviously, when it refers to the bargaining agent for the members of the bargaining units, described in sections 1 and 3 of schedule 1, that's deemed to be OPSEU by section 81 of Bill 90. This is essentially, as I understand it, the NDP's desire to give an expedited process to a vote and certification for OPSEU for the new units during the three years following royal assent.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** Yes, thanks—

**Mr. Mike Colle:** I have a question, Madam Chair.

**The Chair (Mrs. Linda Jeffrey):** Hold on a second. Ms. DiNovo has the floor. I'll come back to Mr. Colle. You can ask leg counsel after that.

**Ms. Cheri DiNovo:** Thank you for that. That's what we're asking for.

**The Chair (Mrs. Linda Jeffrey):** Mr. Colle.



**Mr. Mike Colle:** Does the NDP motion exclude—let's say another union, CUPE or somebody, wanted to come in and represent. Would that exclude their ability to sign up members and be part of the process?

**Ms. Mariam Leitman:** No, Mr. Colle. As you know, Bill 90 provides for certification of any union. It sets out, in sections 29 to 43, certification, decertification processes etc.—very similar to those under the Labour Relations Act. Those are available to any union; they could proceed. What this does is give an expedited process for OPSEU in addition to the regular process for certification in Bill 90.

**Mr. Reza Moridi:** May I ask ministry staff to address the committee, please?

**The Chair (Mrs. Linda Jeffrey):** Sure. Ministry staff? Good morning. Welcome. If you can identify yourself for Hansard, please.

**Mr. Trevor Rands:** Trevor Rands, legal counsel for the Ministry of Labour, legal services branch. From a legal perspective, I don't really have anything additional to add, other than what legislative counsel has already indicated, and that is, essentially, that this provides a special process, in addition to the general process for representation rights set out in Bill 90, for OPSEU.

**The Chair (Mrs. Linda Jeffrey):** Okay. Any further questions of the committee?

**Ms. Cheri DiNovo:** Just to address my colleagues opposite's concerns, we're not dealing—this is really apples and oranges that he's brought to the table. The fact is that OPSECAAT—that we have had a signing-up process in place and that a great deal of work has already been done, clearly, in part, leading to Bill 90, and we would just like to see that work recognized. We don't want to have to send them back to do the same work all over again. We're not talking about partisanship here. I would like to see the government do this in light of what they've already done, whether they want to pass this amendment. I know that this is a partisan-warfare place and they'll probably vote against this amendment, but what I would ask them, and I want to see in Hansard, is that they do the right thing here and recognize the hard work, so that perhaps in regulations, perhaps in some other method, this be expedited. Again, 7,000 people have requested an action of this government, and we are simply asking that the government take that action.

1110

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Mrs. Mitchell.

**Mrs. Carol Mitchell:** The Ontario Labour Relations Board will determine the status of the cards?

**The Chair (Mrs. Linda Jeffrey):** Is that a question?

**Mrs. Carol Mitchell:** To the staff.

**The Chair (Mrs. Linda Jeffrey):** That's a question to leg counsel, is it?

**Mrs. Carol Mitchell:** That's a question to the staff from the ministry. Is it up to the Ontario relations board to determine the status of the cards filed by OPSEU?

**Mr. Trevor Rands:** Under the representation rights set out in the bill in part V, it has to appear to the board

that there is a requisite amount of support in order for the board to order an application, and that threshold of support is 35%. So the board will determine whether it appears to them that there is that requisite support in order to make its assessment about whether to order a representation vote. That's the process, the general process, under part V of the bill.

**Mrs. Carol Mitchell:** Clearly, the previous motions that we spoke to were voted on the percentage of the 35, which was supported. So it would be up to the Ontario relations board to move beyond that or to recognize those cards. We've laid out the process of going forward, correct? If this is supported, it obviously has to go to the House and be further debated.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions of committee? Seeing none, shall section 81.1 carry? All those in favour? Ms. DiNovo, this is your bill. All those opposed?

**Ms. Cheri DiNovo:** I just wanted to make a further comment. I had my hand up.

**The Chair (Mrs. Linda Jeffrey):** Okay, sorry.

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** Your hand was up. I'm sorry, I assumed it was a vote.

**Ms. Cheri DiNovo:** Fair enough.

**The Chair (Mrs. Linda Jeffrey):** I'm going to take the vote as it was. That's lost.

Next are sections 82 through 85. We have no amendments. Shall they carry? All in favour? All opposed? That's carried.

Next section: Mr. Wilson, I understand that your second motion on page 11 refers to the one on page 10, so can we do page 11 before we do page 10, since one is dependent on the other?

**Mr. Jim Wilson:** Yes. I'm going to withdraw both amendments on pages 10 and 11.

**The Chair (Mrs. Linda Jeffrey):** Okay. So you're going to page 12?

**Mr. Jim Wilson:** Yes.

I move that subsections 7.1(9) and (10) of the Ontario Colleges of Applied Arts and Technology Act, 2002, as set out in subsection 86(1) of the bill, be struck out and the following substituted:

"Composition of board

"(9) The board of directors shall consist of the president of each college."

This, of course, was a request by Colleges Ontario, indicating that it might be rather awkward and unworkable if the chairs are also included on the board. They talked about the difficulty they've had with their own organization when both presidents and chairs were represented. Their request to the government and to all of us was to just have the college presidents represent their respective colleges on the board.

**The Chair (Mrs. Linda Jeffrey):** Mr. Moridi.

**Mr. Reza Moridi:** The council would have mechanisms to address colleges' concerns about governance without requiring an amendment to Bill 90. Like any other corporations, the council would have the power to



pass bylaws to create executive committees, other committees, subcommittees etc. In the role of board chairs here, the college boards of governors are accountable for the financial management and the strategic direction of the colleges, and they are the employer. Therefore, in governance terms, board chairs have a role to play that's distinct from college presidents and need to be involved in the critical decision-making concerning collective bargaining settlements that will be binding on the colleges' side.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? Those opposed? That's lost.

Shall section 86 carry? All those in favour? All those opposed? That's carried.

There are no amendments to section 87. Shall it carry? All those in favour? All those opposed? That's carried.

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** Section 88: Shall it carry? All those in favour? All those opposed? That's carried.

On the schedule, we're going to deal with the NDP motion since it affects all of the schedule rather than going through each section.

**Ms. Cheri DiNovo:** I move that schedule 1 to the bill be repealed and the following substituted:

"Schedule 1

"Academic staff bargaining unit

"1. The academic staff bargaining unit includes all persons employed by an employer as teachers, counsellors or librarians, but does not include,

"(a) chairs, department heads or directors;

"(b) persons above the rank of chair, department head or director;

"(c) other persons employed in a managerial or confidential capacity within the meaning of section 3 of this schedule;

"(d) a person who is a member of the architectural, dental, engineering, legal or medical profession, entitled to practise in Ontario and employed in a professional capacity; or

"(e) a person employed outside Ontario.

"Support staff bargaining unit

"2. The support staff bargaining unit includes all persons employed by an employer in positions or classifications in the office, clerical, technical, health care, maintenance, building service, shipping, transportation, cafeteria and nursery staff, but does not include,

"(a) foremen or supervisors;

"(b) persons above the rank of foreman or supervisor;

"(c) persons employed in a confidential capacity in matters related to employee relations or the formulation of a budget of a college or of a constituent campus of a college, including persons employed in clerical, stenographic or secretarial positions;

"(d) other persons employed in a managerial or confidential capacity within the meaning of section 3 of this schedule;

"(e) students employed in a co-operative educational training program undertaken with a school, college or university;

"(f) a graduate of a college during the period of 12 months immediately following completion of a course of study or instruction at the college by the graduate if the employment of the graduate is associated with a certification, registration or other licensing requirement;

"(g) a person who is a member of the architectural, dental, engineering, legal or medical profession, entitled to practise in Ontario and employed in a professional capacity; or

"(h) a person employed outside Ontario.

"3. In this schedule,

"person employed in a managerial or confidential capacity' means a person who,

"(a) is involved in the formulation of organization objectives and policy in relation to the development and administration of programs of the employer or in the formulation of budgets of the employer,

"(b) spends a significant portion of his or her time in the supervision of employees,

"(c) is required by reason of his or her duties or responsibilities to deal formally on behalf of the employer with a grievance of an employee,

"(d) is employed in a position confidential to any person described in clause (a), (b) or (c),

"(e) is employed in a confidential capacity in matters relating to employee relations,

"(f) is not otherwise described in clauses (a) to (e) but who, in the opinion of the Ontario Labour Relations Board, should not be included in a bargaining unit by reason of his or her duties and responsibilities to the employer."

Very succinctly, what we're after here—and what we don't understand that is included in Bill 90—is that teachers are teachers are teachers, and support staff are support staff are support staff. There should be two bargaining units, representing support staff on one side, faculty on the other side. Really, in a sense, we hope the whole gist of Bill 90 is to bring part-time, sessional and contract faculty onto the same playing field as their full-time counterparts, because they do the same job. So that's the gist of this. Instead of having a number of bargaining units—it makes it unwieldy; you need, of course, more administration to administer them; negotiations are more unwieldy; possibility for settlement is less likely across the board. This just streamlines the process and really recognizes who part-time, sessional and contract faculty and support staff, both part-time and full-time, really are.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Reza Moridi:** The Whitaker report, from the beginning, recommended that there would be two bargaining units for part-time support staff and part-time academics to address their unique needs. In the meantime, Bill 90 gives provision and also flexibility for those two part-time bargaining units to merge with the full-time ones in the future. So the provision is in the act, but



in the meantime, the bill considers and recognizes the specific needs of part-time staffers in the college system. That's what becomes of the two separate units for part-timers. In the meantime, the provision is there in the bill, in the act, that in the future, if they want to merge, they can.

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**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Mr. Bailey.

**Mr. Robert Bailey:** I'd like to ask our legislative counsel to explain to myself and for the record the impact on Bill 90 if this were accepted.

**Ms. Mariam Leitman:** The impact on Bill 90, legislatively—Bill 90, as it's set up, addresses a schedule that includes four bargaining units. The processes, for example, for changing the bargaining units assume four bargaining units, and it's my opinion that moving to two bargaining units in the schedule, given the sections and amendments that have been carried thus far, would not work with the preceding part of the bill.

**The Chair (Mrs. Linda Jeffrey):** Further debate? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Shall sections 1 through 5 of schedule 1 carry? All those in favour? All those opposed? That's carried.

Shall schedule 1 carry? All those in favour? All those opposed? That's carried.

Shall the title of the bill carry? All those in favour? All those opposed? That's carried.

Shall Bill 90, as amended, carry? All those in favour?

**Mr. Mike Colle:** A recorded vote.

**The Chair (Mrs. Linda Jeffrey):** A recorded vote has been requested. Ms. DiNovo, you have a comment?

**Ms. Cheri DiNovo:** Yes, I just want to go over, just succinctly—we're going to vote in favour of Bill 90; there's no question. We want to move forward with the

rights for part-time and sessional college faculty and everyone else in the college system and for the sake of the students and the public.

But I want to go over our concerns, and I hope, again, setting partisan interests aside, that the government addresses these concerns in some way, shape or form. Number one, successor rights, and that's very key; second of all, contract arbitration and the fact that Bill 90 leaves it out; we're very concerned that there aren't any anti-scab provisions—so deemed strike or lockout provisions, the bargaining units and modifications to bargaining units.

Again, we brought forward amendments; again, they were defeated. But we hope that the government itself bargains in good faith there around bargaining units.

Handling existing certification applications: We hope the government assists those who have already gone forward with that and works with the Labour Relations Board making sure that that happens for OPSEU. With that said, we in the New Democratic Party are prepared to vote for Bill 90.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Shall Bill 90, as amended, carry?

**Ayes**

Bailey, Colle, DiNovo, Mangat, Mitchell, Moridi, Wilson, Zimmer.

**The Chair (Mrs. Linda Jeffrey):** That's unanimous; it's carried.

Shall I report the bill, as amended, to the House? All those in favour? All those opposed? That's carried.

Thank you, committee. I just remind you that the subcommittee of general government will be meeting on September 22 after question period. We're adjourned.

*The committee adjourned at 1125.*



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Mr. Trevor Day

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Monday 20 October 2008

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Lundi 20 octobre 2008

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Photo Card Act, 2008

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Monday 20 October 2008

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Lundi 20 octobre 2008

*The committee met at 1402 in room 228.*

## SUBCOMMITTEE REPORT

**The Vice-Chair (Mr. David Oraziotti):** Good afternoon, everyone. We'll get started. We are here this afternoon to consider deputations on Bill 85, An Act to permit the issuance of photo cards to residents of Ontario and to make complementary amendments to the Highway Traffic Act.

I understand there's a subcommittee report. Ms. Mitchell.

**Mrs. Carol Mitchell:** Your subcommittee met on Tuesday, September 23 to consider the method of proceeding on Bill 85, An Act to permit the issuance of photo cards to residents of Ontario and to make complementary amendments to the Highway Traffic Act, and recommends the following:

(1) That the committee meet in Toronto on Wednesday, October 15, 2008 and Monday, October 20, 2008, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in local newspapers in the border communities of Kingston, Niagara, Sarnia, Sault Ste. Marie, and Windsor, as well as the Globe and Mail and L'Express for one day during the week of September 29, 2008. This is to include French newspapers where applicable.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel and the Legislative Assembly website.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Friday, October 3, 2008.

(5) That groups and individuals be offered 10 minutes for their presentation. This time is to be scheduled in 15-minute increments to allow for questions from the committee.

(6) That, in the event all witnesses cannot be scheduled, the subcommittee consider an additional day of public hearings.

(7) That the research officer provide the committee with the requested background information by Thursday, October 9, 2008.

(8) That the Minister of Transportation be invited to appear before the committee to make a presentation of up

to 15 minutes followed by 15 minutes of questions by the committee.

(9) That the Information and Privacy Commissioner be invited to appear before the committee to make a presentation of up to one hour. This time would include questions from committee members.

(10) That the deadline for written submissions be 5 p.m. on Monday, October 20, 2008.

(11) That the research officer provide the committee with a summary of presentations prior to 12 noon on Wednesday, October 22, 2008.

(12) That for administrative purposes, proposed amendments be filed with the committee clerk by 5 p.m. on Thursday, October 23, 2008.

(13) That the committee meet for the purpose of clause-by-clause consideration of the bill on Monday, October 27, 2008.

(14) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Mr. Chair, both days will not be required as we were able to meet all of the requests in one day of appearances.

**The Vice-Chair (Mr. David Oraziotti):** Thank you for that, Ms. Mitchell. Any debate? Seeing none, all in favour? Opposed? Carried.

## PHOTO CARD ACT, 2008

## LOI DE 2008 SUR LES CARTES-PHOTO

Consideration of Bill 85, An Act to permit the issuance of photo cards to residents of Ontario and to make complementary amendments to the Highway Traffic Act/ Projet de loi 85, Loi permettant la délivrance de cartes-photo aux résidents de l'Ontario et apportant des modifications complémentaires au Code de la route.

STATEMENT BY MINISTER  
AND RESPONSES

**The Vice-Chair (Mr. David Oraziotti):** For our next item, we have a presentation from the Honourable Jim Bradley, the Minister of Transportation. Would he like to come forward with any staff that perhaps are with him for the presentation? I understand the presentation will be



about 15 minutes, and I'll allow 15 minutes for questions, which will be five minutes for each caucus. Whenever you're ready.

**Hon. James J. Bradley:** Good afternoon, members of the committee. Thank you for inviting me to be with you today. I'm with Sam Erry and Steve Burnett from the ministry. I think we have as well legal counsels Patrick Moore and Todd Milton, senior business adviser Catherine Brooks—they're in the room behind us, so we're with you today. Gilles Bisson asked that we pause a moment until he's able to come back.

**Mr. Gilles Bisson:** I'm back.

**Hon. James J. Bradley:** He's back. So I wanted to accommodate his wishes.

I'm here today to tell you about several important steps in our government's plan to keep our economy moving and build a safe and prosperous Ontario. The first part of the plan is to provide Ontarians with a convenient and secure passport alternative for use at Canada-US land and sea border crossings. Next, we plan to implement a much-needed technology that will help ensure the integrity and security of these cards. Finally, to improve access and opportunity for all, we are proposing a completely new card, a photo identification card for Ontarians who do not drive.

Of course, these new cards will provide options for Ontarians. Obtaining them will be completely voluntary. As many of you are aware, the US government started implementing the western hemisphere travel initiative as a key recommendation of the 9/11 commission report. As of June 1, 2009, travellers entering the US by land or sea will be required to present a passport or an acceptable alternative. That is why this government has proposed that a new, enhanced version of the existing Ontario driver's licence be available as an alternative.

With about half of all Canadians holding a passport, we want to make it as simple as possible for Ontario travellers to access a secure border-crossing document. This is a great opportunity for the province to take a leadership role in supporting our economy by helping to avoid confusion and traffic congestion at the border. I think we would all agree, particularly those who represent border areas but those who are not far from the border as well, that this is an enviable goal which I think is shared, if I may say so, by individuals and elected representatives on both sides of the border—along the northern United States and the southern part of Canada, not only our province, but others. We wish to minimize delay for travellers and commercial drivers as a result of the new US requirements. This new secure driver's licence card would offer the same privileges as the existing card, with the addition of information needed to show proof of Canadian citizenship. That is what is looked for at the borders: the proof of your citizenship at the time when the full impact of the United States requirements and Canadian requirements are in effect. The new secure photo card would extend this border crossing advantage to Ontarians who do not hold a driver's licence. Our borders are the economic gateway to this

province and must remain safe, open and accessible on June 1, 2009, and indeed every day. Our economy and our prosperity depend on it.

I was Minister of Tourism for a period of about four years and I recognized in that portfolio in particular—though those who have other responsibilities would as well—the importance of having a border that is easily crossed and yet appropriately secure, as both governments at the national level would want it to be.

Our economy and our prosperity of course depend on it. Our social and family ties that extend beyond the border do too. It's an interesting fact that each day more than 92,000 cars cross our borders and more than 22,000 trucks carry \$650 million in goods a day. Over 66% of all Canada's trade by truck with the US passes through Ontario borders; that's two thirds going through our borders alone. This all amounts to more than \$320 billion in trade each year with the US, Ontario's largest trading partner. In addition, a recent Canadian Tourism Research Institute study estimated that border delays cost Ontario more than \$5 billion annually. Without new measures to address the western hemisphere travel initiative rules, it has been predicted that Ontario could lose nearly 1.5 million US visitors per year.

#### 1410

Everyone applying for an enhanced driver's licence will be expected to provide documents that confirm their Canadian citizenship. That, of course, emphasizes again that what is important to those at the border is the citizenship of the person who wishes to cross the border. I want to be clear that throughout the development of this program the protection of privacy has been and continues to be a consideration of paramount importance. We have consulted with the Ontario Information and Privacy Commissioner to ensure that the enhanced driver's licence is developed in a manner that protects the privacy and security of personal information. I can assure you that the ministry has no plans to develop a citizenship information database. We are committed to continue working with the commissioner every step of the way. I must say it's a great advantage that we have in this province, having the office of the commissioner, and having the commissioner providing advice to us as legislation is being developed and providing whatever advice the committee deems appropriate during these considerations.

Making sure that all these new cards are issued legitimately is critical to combating fraud and identity theft. One of the ways we can accomplish this is through the use of photo comparison technology. This technology will help ensure that multiple drivers' licences are not issued to the same person under different names. As we know, that's a major challenge for all jurisdictions.

Photo comparison technology has been implemented successfully in many North American jurisdictions, with positive results. Illinois, for example, pioneered this technology nearly 10 years ago and has since discovered more than 5,200 cases of identity fraud. Not only will this increase the integrity of the Ontario card as a pass-



port alternative, but it will also help us stop suspended drivers from improperly obtaining a new driver's licence under a different name.

We know that the Ontario driver's licence is among the most commonly used documents for identification purposes. Ontarians are regularly asked to prove their identity for many day-to-day transactions such as opening a bank account and proving age eligibility for a senior's discount. A photo card for people who do not or cannot drive would improve access to everyday services and would be a convenience for all Ontarians. This has long been advocated by youth, the blind, people with disabilities and seniors' communities. And, like the enhanced driver's licence, our photo card could be enhanced for use as a convenient passport alternative for entering the United States.

Removing barriers to access increases opportunity for everyone. Our government is working closely with the Canadian Border Services Agency and the US Department of Homeland Security throughout its development, and we will continue to do so over the coming months.

I should note at this point in time that I had an opportunity in Washington to meet in a couple of locations with representatives from the United States back when Ontario was pioneering the effort to have an alternative to the passport. This had considerable support, I must say, bipartisan support, in the United States Congress, both in the Senate and the House. I remember one day being in contact with the offices of two different senators who I don't think would agree on anything except the fact that they didn't like this. One was Senator Ted Stevens, of Alaska, and the other was Senator Patrick Leahy, of Vermont. They would not agree on a lot of things, I think I'm safe to say. They were co-sponsoring an initiative within the United States Senate to delay the implementation of the requirements that the US Department of Homeland Security was proposing for the border crossings. We have had many allies on both sides of the border—people of all political parties here in Canada, people of the two main political parties in the United States, people at all levels of government, people from commerce and various agencies that have a particular interest in this issue. I want to commend Representative Louise Slaughter, for instance, who represents New York state. She has a district in the northwestern part of New York state and is one of the really combative persons in the United States House of Representatives on this issue.

In addition to this, the Premier has met with governors in adjacent states and other states that would have visitors frequently visiting Canada and Canadians visiting the United States. So I've been, I must say, very pleased to see the coalition of goodwill that has built up on both sides of the border on this issue.

Ontario is not isolated in this particular effort. Jurisdictions on both sides of the border see a definite need for a passport alternative. To name just a few, Quebec and Manitoba, New York state and Michigan, and I know the state of Washington and British Columbia are pursuing similar programs. Ontarians need safe and secure

alternatives and our neighbours, our trading partners and our friends expect us to do our part by taking action to protect the safe and efficient flow of people and goods across our borders by the June 2009 deadline and beyond. I believe the proposed legislation will meet these expectations and the priority objectives of this government.

I want to thank all members of the Legislature because we've had this issue dealt with from time to time in different ways through question period, through debate in the Legislature, through people who have participated in various forums. It has been very helpful to see the degree of support amongst members of all parties. We recognize that there can be quarrels over specifics in legislation of this kind, but it has been encouraging to see that we on this side, just as Americans immediately on border states, have been pleased to move forward.

One of the things that has happened as a result of this initiative on the part of Ontario is that we're seeing the same thing happening in the United States. For us, that is the advantage, of course, because we want Americans to have something other than the passport as an alternative. When June 2009 comes, it's the passport, the Nexus card or an alternative. Other states have been working hard on this, and that's pleasing because not everybody—even though Canadians have a better record—I shouldn't say a better record—have more participation in the passport than Americans, we do believe that Americans with an alternative form of identification are more inclined to visit, particularly the day-trippers, than if they had to go through the process of getting a passport.

I thank all of you today for your interest in this important piece of legislation. I look forward to your input.

**The Vice-Chair (Mr. David Orazietti):** You're reading my mind. You had two minutes before we began the rotation for questions, but thanks for wrapping that up. We'll start with questions from the opposition. We have about five minutes for each caucus.

**Mr. Frank Klees:** How much?

**The Vice-Chair (Mr. David Orazietti):** Five minutes.

**Mr. Frank Klees:** Five minutes. I thought I had 15.

**Mr. Bill Mauro:** Fifteen in total.

**Mr. Frank Klees:** Fifteen in total. We're short-changed again, Minister.

**Hon. James J. Bradley:** I look forward to your private interventions later.

**Mr. Frank Klees:** I'm sure.

Thanks for your presentation. You know that we're certainly supportive of the initiative. We expressed, and continue to express, some concerns and I'm hoping that you'll be able to address some of those now with your staff here.

We'll be hearing from the privacy commissioner following your presentation. There were a number of concerns that the privacy commissioners outlined at their meeting earlier this year, in February I believe. You're familiar with those and your staff are familiar with those.



Can you just confirm for us that the concerns that were laid out very clearly and succinctly by the privacy commissioners have been addressed or, if not yet, will be before the implementation of the Ontario project?

**Hon. James J. Bradley:** Some have been addressed and some are ongoing. I'll get Steve Burnett to comment on this.

**Mr. Steve Burnett:** Sure. There were a number of—

**The Vice-Chair (Mr. David Oraziotti):** Pardon me. For the purposes of Hansard, please state your name before you proceed.

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**Mr. Steve Burnett:** Steve Burnett. There were a few issues that the commission raised. One was with respect to citizenship and citizenship verification: Would Ontario be establishing a citizenship database and would we be duplicating process? It was properly within the purview of the federal government. We will not be establishing a database of citizens in Ontario. We will be issuing an enhanced driver's licence, which is *prima facie* evidence of citizenship but not in itself a confirmation of citizenship. So we're not establishing the database.

There was a concern raised with respect to the radio frequency identity technology in the card. That is a requirement of the Department of Homeland Security. It's an imposed standard. If we want to implement the enhanced driver's licence program and have it accepted, that's a condition of that acceptance. We have taken steps to ensure that the card itself can't be read without the user's intervention and part of the implementation includes a protective sleeve, which a number of other jurisdictions are also proposing, which essentially blocks the card and makes it opaque to readers unless it's removed from that thing.

The other piece is potentially around the implementation of the photo-comparison technology, which compares images. There was concern that potentially the application or the scope of this could be broadened beyond this initial implementation. The act itself is very specific with respect to the uses of that technology and actions that we can take as a result of findings of that technology. This is not a totally automated process. Once duplicate images are found, there's staff intervention and adjudication before any action on the part of the registrar.

**Mr. Frank Klees:** With regard to the RFID, I have a paper here that was submitted through the Consumers Council of Canada that refers to "none of these provinces have gone beyond reiterating the false and misleading claims that since the number on the EDL's chip is random and 'meaningless' it contains no personal information" etc.

You're familiar with this, no doubt. Could you just very briefly comment on that? It's a strong accusation, that we're dealing here with false and misleading information. What assurance can you give us that we are in fact dealing with good information here and that the direction you're heading can be reassuring to our citizens?

**Mr. Steve Burnett:** The radio frequency ID technology that we're using—generation 2 high-frequency

technology—is standards based. There are basically four areas where data can be stored on that chip—96 bytes of information total—and there's no personal information. It doesn't contain the information on the face of the card and it has no identifying information about an individual on the card. The information in the card is a serial number, which is the chip serial number applied at the time of manufacture, and then an ID, which is the key for the receiving organization to access information on the Canada Border Services site. There will be no personal information exposed through the card and the card itself will be protected with a sleeve, unless the individual takes it out.

The technology choice—again, I come back to this—is a technology choice that is driven by the DHS requirement. In terms of the representation that was made, the Department of Homeland Security did publish a notice of proposed rule-making. A number of jurisdictions and a number of technology providers responded to that and based on the input from those sources there was a final determination of the technology.

**The Vice-Chair (Mr. David Oraziotti):** Thank you. That has concluded the five minutes of time for your caucus. Mr. Bisson?

**M. Gilles Bisson:** Une question—

**Hon. James J. Bradley:** The time goes quickly when you're having a good time, Frank.

**M. Gilles Bisson:** Toujours.

**Mr. Frank Klees:** I was just going to ask you a question.

**Hon. James J. Bradley:** That's good.

**M. Gilles Bisson:** Seulement une question avant que je débute : pour quelle raison n'a-t-on pas de traduction ici aujourd'hui?

**The Vice-Chair (Mr. David Oraziotti):** Unfortunately, Mr. Bisson, the room is not equipped with translation. If you want a recess to move to a different room to proceed, we can attempt to do that.

**M. Gilles Bisson:** Non, on peut continuer aujourd'hui. Je veux seulement faire le point que, la prochaine fois, quand tu me vois venir, je veux avoir de la traduction. Okay?

**The Vice-Chair (Mr. David Oraziotti):** Okay.

**Mr. Gilles Bisson:** Fair enough? All right, thank you. For my colleagues who didn't understand, at times there are points that we need to ask questions in French because we have presenters who may want to do that. That we don't have translation here I think is a bit unfortunate. So there's been an offer to move to the other room, but for the sake of moving things forward, we will go in English, and if anybody has a problem, please let me know and we'll move the room.

I only have five minutes. Man, I've got five or six questions.

Let me ask you the following, really quickly. Tell me, Minister, in one minute or less, because I know you are good at ragging the puck: You've been around here longer than me, and I've been here for a while. I am in support of this legislation; I want to say upfront that I



think it's not a bad idea. But how is this particular initiative going to end the issue of fraud when it comes to people getting licences illegally? Explain to me exactly how that happens.

**Hon. James J. Bradley:** It's only one component. That's not the primary purpose of this, but it is one of the components, and that is primarily using the photo comparison technology. One of the problems that we have now is that people can have about four different photos. Some of the fraud that has taken place has involved people having four or five different photos and coming in with these kinds of photos. The new technology allows us to compare these and to identify people who are being fraudulent. We have other initiatives under way within the ministry to deal with that problem, but that is not the primary—that's probably a positive side effect of this particular legislation.

**Mr. Gilles Bisson:** So we agree that at the end of the day this initiative will not eliminate people getting driver's licences illegally.

**Hon. James J. Bradley:** It is one of the components—

**Mr. Gilles Bisson:** Explain to me how it's going to happen, different from today.

**Hon. James J. Bradley:** Well, in the past, we haven't had this technology available to us, and so we had to do things manually: People had to go through the process of checking, people had to inform, police had to inform, others had to inform.

**Mr. Gilles Bisson:** You're not answering my question. Tell me how this is going to differ from the current system. We currently have a photo on our driver's licence and now we're moving to this new card. Tell me what's new in the technology that's going to allow us to catch people who are trying to get driver's licences illegally.

**Hon. James J. Bradley:** Mr. Burnett will assist me in that regard.

**Mr. Gilles Bisson:** There you go. I was waiting for you. Thank you.

**Mr. Steve Burnett:** The photo comparison technology sits between the counter and the card production system. Once a photo is taken, it's converted into what's called a template and it's compared against the other images in the driver database. If there's a duplicate found, there's a stop put on the card order and it goes into—

**Mr. Gilles Bisson:** Can I just ask you one question: Do we not do that now?

**Mr. Steve Burnett:** No, we don't.

**Mr. Gilles Bisson:** So that's the difference.

**Mr. Steve Burnett:** That's the difference. It's the automation of that process and the stop on the order.

**Mr. Gilles Bisson:** So you have basically technology to compare the photos?

**Mr. Steve Burnett:** That's correct.

**Mr. Gilles Bisson:** That answers the first question.

Tell me what the European experience is in regard to people crossing the border from France to Portugal or

Spain or Italy or wherever it might be. What's the difference over there in regard to how they deal with their security issues versus North America?

**Mr. Steve Burnett:** To speak generally to that, they've actually eliminated the borders and the requirements. So there isn't the same attention to border crossing within the EU.

**Mr. Gilles Bisson:** So I hate to say it, but my friends south of the border are taking this maybe to an extreme. Is this, at the end of the day, maybe not a good thing for our economies in the long shot?

**Hon. James J. Bradley:** What's good for our economies? Having no border?

**Mr. Gilles Bisson:** No, I wouldn't argue that for two seconds, not as a New Democrat. My point is that the Europeans—you and I have travelled around the world and seen how they do things in other places. My experience is that when I travel across the border to France or Italy or wherever it might be, there's much less rigour when it comes to security than we have in North America. In Europe there tends to be not any more or any less activity as far as terrorism from one country to the other. So at the end of the day, is this really about making us look as if we're doing something, or really doing something in the right direction?

**Hon. James J. Bradley:** I would say this will have an effect. Let's face it: Years ago, if you and I crossed the border, getting across the border was pretty simple. They asked one question: "What is your citizenship?" You said verbally what your citizenship was. They asked you where you were going, you said where you were going, and they waved you through.

After 9/11 happened, that of course is not the regimen that you're going to face at the border, and there's considerable concern in North America that our neighbours in particular are a major target. We could be a target as well, but our neighbours to the south of us are a major target. We believe that this will be a piece of technology and a card that will help us to cross the border easily, yet still with security.

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**The Vice-Chair (Mr. David Orazietti):** That concludes the time for the NDP caucus. Mr. Mauro.

**Mr. Bill Mauro:** First of all, Minister, I want to congratulate you on bringing the legislation forward. I do remember, not that long ago, in the House, when you were in a different portfolio and this issue was first getting broader attention. In your former portfolio as Minister of Tourism, you led a bit of a charge and a battle, I would say, as one of the first people in Canada and certainly in Ontario, when others whom I won't name had thrown up their hands and felt there was very little to do about this. I remember those moments in the Legislature very clearly, and I congratulate you on that.

I wanted to confirm a few things, one being that while there will be a cost attached to the enhanced driver's licence, this in fact is completely voluntary. No one, when they are trying to get a driver's licence, will be required to get the enhanced driver's licence, and the cost



will remain the same under the old system. It will be their choice should they wish to do this. Is that correct?

**Hon. James J. Bradley:** That is correct. There's always a concern that you're going to impose a mandatory requirement on people. This is strictly voluntary. This is for people who decide that perhaps they don't want to have to carry a passport with them all the time, they don't want to go through getting a Nexus card, so they want another option available.

What's as important to us in Ontario is that adjacent jurisdictions are doing the same thing. Quite frankly, Canadians are more inclined to get a passport than our good neighbours to the south. Our numbers show that fewer Americans have a passport than Canadians, so having this alternative available in states along the border in particular, where there's a lot of visitation here, will be of benefit to us and a convenience to those in the United States.

Already, we have won a couple of concessions. We put it in our Ontario submission—I'm sure lots of other people did as well—that kids 15 and under would only require a birth certificate and that groups of kids 18 and under coming as a hockey team or a band crossing the border would not have the same requirements. So we're seeing some movement that initially was not there in the Department of Homeland Security, and I'm encouraged by that.

**Mr. Bill Mauro:** On the embedded chip technology, it's been expressed, I think, to some of us that there's some concern around that technology being used by others to steal information that might be contained on the card. It's my understanding that should someone have a scanner or a reader, they would not be able to get any of the information that's on the card, but in fact they'd only be able to get a serial number. You'd actually have to be able to hack into the computer that has the information in it; otherwise, that embedded chip technology poses no risk, in terms of information being stolen, to the general public. I'm just looking for confirmation of that.

**Hon. James J. Bradley:** That is correct. I'll get Sam Erry of our ministry to elaborate.

**Mr. Sam Erry:** You're quite correct in terms of what data will or will not be accessible. It's basically a series of numbers, and if you can do something with that, then great, but the likelihood of that happening is extremely low. As Steve Burnett indicated, we're also providing a protective sleeve, a Faraday sleeve, for the card so there's no opportunity for anyone to take the information.

**Mr. Bill Mauro:** The last question is on the photo technology piece that's being implemented. Through this enhanced driver's licence, there's the potential for fewer people to be able to get duplicate driver's licences in the province of Ontario, should people voluntarily avail themselves of that particular licence. Is that correct?

**Hon. James J. Bradley:** Yes, that would be correct. It's one of the components of trying to reduce fraud. It's not the only component, but it's a significant component to have the photo comparison technology available to us.

**The Vice-Chair (Mr. David Orazietti):** Thank you, Minister and staff, for your presentation today. That concludes the time.

**Hon. James J. Bradley:** It's a pleasure to be before the committee, and I await your deliberations.

#### OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

**The Vice-Chair (Mr. David Orazietti):** I'd like to call on the Office of the Information and Privacy Commissioner of Ontario. Dr. Ann Cavoukian, thank you for being here today, and welcome to the committee. If anyone else will be speaking again, for the purposes of Hansard, introduce yourself and proceed. You have about an hour for your presentation, so if you'd like to get started, go ahead. Just one other reminder: Any time that is not used by your presentation will be distributed among the members for questions.

**Dr. Ann Cavoukian:** I'd like to begin by thanking the Chair, the Vice-Chair and the members of the Standing Committee on General Government for the opportunity to make a presentation today during your review of Bill 85, commonly referred to as the Photo Card Act, 2008.

As Ontario's Information and Privacy Commissioner, my mandate encompasses many responsibilities. Of these, I believe that providing counsel on the privacy implications of proposed legislation or sweeping technological changes to government is one of the most important duties that I have. I also believe that it is vitally important to be practical in the protection of privacy and ensure that the right information reaches the public at all times. Unless the public is informed of what the privacy issues are and the associated concerns, these issues may surface only after the fact when it may be too late. The public needs to understand the implications of this new program and legislation in order to make an informed choice if they decide to apply for one of these cards—and I totally agree that this is a completely voluntary venture.

The primary purpose behind this proposed bill is to enable the government to issue an enhanced driver's license, as you've heard—I'm going to refer to it as an EDL—which is intended to serve as an alternative to a passport solely for the purposes of entering into the United States. In addition, Bill 85 provides the government with the authority to issue new photo cards for those who do not or cannot hold a driver's license, such as people who may have a visual impairment. Such photo cards are available in virtually all other provinces in Canada. Bill 85 makes these available in Ontario and also allows the government to enhance them to serve as an alternative to a passport when travelling to the United States, parallel to an EDL.

I further understand that the entire western hemisphere travel initiative—which I'm going to refer to as WHTI, which is the common use of the term—has grown out of security concerns following the events of 9/11. As an individual citizen, I certainly understand people's fears relating to terrorism; however, as commissioner, I also



fear the potential loss of our freedoms, especially our privacy, which forms the basis of all other freedoms. In the days following 9/11, many people, especially those in the United States—many of my colleagues in the US—were reluctant to speak out on behalf of privacy for fear of being viewed as unpatriotic. I remember those days vividly.

I had a call, in response to a call from the CBC a day or two after 9/11—they called me seeking my position on the events that had transpired. It was a very difficult position to be in, and of course I had to issue a position, which I did. I issued a position paper, which was posted jointly to our website—CBC and ours. The heading was Public Safety is Paramount—But Balanced Against Privacy. The position I took was that of course we had to protect public safety, but—and it's a very important but—we also had to ensure that any security measures undertaken were real and not illusory. They had to be necessary and effective. We couldn't just give up our privacy, our freedom, for the mere appearance of security—and it had to be real. I argued that our search for safety and security could not come at the expense of privacy, that this would be a fundamental error. Forfeiting our privacy in the pursuit of security is simply too high a price to pay.

Having said that, I want to make it clear that my purpose here today is not to oppose Bill 85, but rather to share some concerns I have with the legislation. I also want to say, for the record, that I am not opposing the government's commitment to introduce an alternative to a border crossing document such as a Canadian passport.

1440

If we have time during question-and-answer period, I'll remind you how this came about and it's actually the lesser of two evils. I just want to make sure that privacy is built into the program. Many people say, "Well, you could just get a passport." I share those views in part because I have a passport, but I regularly travel and I need a passport to get into other countries. Many Canadians do not have a passport and, for whatever reasons, the public, especially in cities across the border, want it. This is their view and it's not my place to tell them that they can't have this. My place is to comment on the privacy implications.

Let me tell you, first, that over the past year my office has developed a very good working relationship with the Ministry of Transportation. Minister Bradley and I have talked a number of times, our staff have talked, and as well with Ontario's intergovernmental affairs and Cabinet Office, who have been keeping my office informed of the implications of WHTI and Ontario's plans to implement an alternative border-crossing device that is acceptable to the US government.

My office has been, I think, quite proactive in advancing the public's understanding of this project. This past summer, I had the opportunity to jointly co-host with Professor Andrew Clement of the University of Toronto a public forum on the privacy and security issues involving the enhanced driver's licence. We heard argu-

ments from members of both sides of the debate, including the University of Toronto's identity, privacy and security initiative, an excellent program at the University of Toronto, as well as from representatives of both provincial and federal governments, and consumer and citizen interest groups such as the Consumers Council of Canada, the Binational Tourism Alliance and the Canadian National Institute for the Blind. This multi-stakeholder input was very helpful in clarifying various elements of the EDL program.

Moving forward, I'd like to give you now a brief overview of my privacy concerns relating to Bill 85.

After careful, very extensive study, we noticed that Bill 85 was missing several privacy principles commonly included under internationally recognized principles called fair information practices. While each of these principles is detailed in my submission, which is extensive, let me just discuss one of them briefly here that speaks to the question of accountability. Openness and transparency, as you know, are key to government accountability, especially when the government serves as the custodian of a significant amount of personal information on its citizens.

My concerns here relate to Bill 85 leaving crucial matters affecting the privacy and security of Ontarians either to the discretion of government officials or to be later prescribed by way of regulation without any requirement for public notice or comment. These matters are not defined in Bill 85, and Bill 85 does not list the specific personal information to be collected, used or disclosed by the government.

For example, the information to be contained on the photo card is not detailed. The security and other features that may allow the photo card to be used for travel purposes are not detailed. The information that the Ontario government will collect from municipalities and other provincial, territorial and federal government departments and agencies is, in my view, too broad. The information that the Ontario government will provide to municipalities and other provincial and federal government departments and agencies is not clear. The contents of information-sharing agreements are not present. The requirements for being issued a photo card are missing. These are the details that can be added to enhance the quality of the bill.

**Mr. Gilles Bisson:** Excuse me. I wonder if we can get the outside a bit more quiet.

**Dr. Ann Cavoukian:** I could try to speak up a little.

**Mr. Gilles Bisson:** No, it's not your fault. There are people outside and I'm having a hard time trying to listen here.

**The Vice-Chair (Mr. David Oraziotti):** Mr. Bisson, we'll take care of that.

**Mr. Gilles Bisson:** Can we put her time back on, please?

**The Vice-Chair (Mr. David Oraziotti):** Go ahead and continue with your presentation. We'll have someone take care of that.

**Dr. Ann Cavoukian:** I'll speak a little more loudly.



**Mr. Gilles Bisson:** No, it's not your fault; it really isn't.

**Dr. Ann Cavoukian:** Thank you.

Under these circumstances, in order for transparency—before I begin, since there was a small break, forgive me; I forgot to introduce my colleagues. I sincerely apologize for that. I go by the script and it wasn't in the script—my omission. I'm joined by my assistant commissioner of privacy, Ken Anderson, and Michelle Chibba, my director of policy. They have both worked extensively on this file with me and I'm very, very grateful for their efforts. I apologize for the omission.

Let me resume. Under these circumstances, in order for transparency and accountability to be achieved, the regulation-making powers provided under Bill 85 must allow for public consultation before a regulation is enacted. This would not be the first time in Ontario that such consultation was actually set out in legislation. Other instances include the Personal Health Information Protection Act, which was introduced in 2004 very successfully; the Environmental Bill of Rights; and the Occupational Health and Safety Act. As government officials and public servants, I feel that we must provide an opportunity for the people of Ontario to voice their thoughts and views regarding a decision that may impact their lives. In my recommendations, I have suggested specific wording to accomplish this goal based on the wording contained in Ontario's Personal Health Information Protection Act, which I referred to earlier.

With regard to government accountability, I would also like to state that Bill 85's provisions relating to photo comparison technology should be made more transparent. It is my understanding that the proposed technology will utilize a face-recognition software application that will convert a photograph, as has appeared on a driver's licence for many years, into a biometric template to allow automatic comparisons behind the scenes within the ministry's database of drivers' photos. The government must make assurances that any biometric collected, even one that the public is accustomed to and that has been collected for some time such as a photograph, will only be used internally and restricted solely for the purpose of verifying the identity of card holders, full stop. Placing strict controls on its use is absolutely crucial.

In the remaining time, I'm going to devote my comments to two important areas: verification of citizenship information and, of course, the radio frequency identification technology, or RFIDs.

First, let me briefly discuss the issue of citizenship verification. Earlier this year I was so exercised by this that I actually went so far as to issue a press release to make the public aware of one of my biggest concerns regarding the security risks associated with the proposed EDL program. Provinces have been asked to verify the citizenship of applicants for the purpose of the EDL program. Applicants will have to provide proof of Canadian citizenship to the Ministry of Transportation and complete a questionnaire with very intrusive ques-

tions. I'm not going to detail the questions now; I have a few examples if we have time in question period. Finally, they have to undergo an in-person interview.

This is baffling to me. I respectfully asked that the federal government, the government of Canada, securely provide citizenship information on naturalized citizens, those not born in Canada, to Ontario to avoid the need to recreate a duplicate process of verifying citizenship for Canadians who apply for an EDL. Please, this isn't something new. We have several precedents, other examples, where secure information-sharing between our federal and provincial governments has taken place. If the federal government has some information in its possession and a province needs it, surely we can, securely, have that information conveyed to that province without having to have the province go through the entire exercise from scratch.

One example is Ontario's Gains program, which receives tax status information on individuals from the federal Canada Revenue Agency, which possesses that information. This has been in place for years; it works beautifully and securely, no problem.

**Mr. Gilles Bisson:** What's it called?

**Dr. Ann Cavoukian:** The Gains program, and we get that from the Canada Revenue Agency.

I initiated a dialogue with the Honourable Stockwell Day, Minister of Public Safety, some time ago—he's responsible for national coordination of the EDL program—to request that the Department of Citizenship and Immigration provide the citizenship information they hold to provinces that request it.

Further, in early correspondence with Ontario's Deputy Minister of Transportation and the deputy minister of intergovernmental affairs, I noted the fact that when it comes to responsible information management, the practice of what's called data minimization should and must always prevail, meaning quite simply that if you don't need to collect and create new personally identifiable information, don't do it. Minimize your data collection, because that is the best way to protect information instead of recreating it, retaining it and then having to securely protect it.

**1450**

Requiring provinces to build their own pockets of citizenship information from scratch—in effect reinventing the wheel—when the federal government already has that information needlessly adds to our privacy and security concerns, not to mention the unnecessary financial and human resources costs of a cumbersome and highly duplicative process. Simply put, the federal government does not need to waste valuable time and resources, not to mention our taxpayer dollars, especially at this time of great economic crisis, by duplicating existing government resources.

Creating a mirror database of citizenship information already held by the federal government could very well serve to propagate identity theft, for one example, and add to the potential unintended consequences of error and inaccuracy that invariably would arise in the process of



recreating already existing information. Unless you think this is a simple yes/no answer to citizenship, and I assure you it is not, this database—or call it what you will. I know some people say we're not going to recreate a database—a file. Call it whatever you want. This database would apparently need to contain the answers and notes to a lengthy in-person interview for each applicant. And it may not end there. If the interview questions reveal a complicated situation, the matter then has to be forwarded to the federal government in any event, resulting in further duplication cost and privacy risk. This is no simple matter, so please let's not complicate it any further.

Let me be clear: I know this is a federal issue; it's not the doing of our Premier or our Minister of Transportation. I give you that. But regardless of the fact that it was a problem created by the federal government, we have to resolve it; it has to be resolved now. The federal government already has this information. It has the ability to easily verify the citizenship of natural Canadians and to securely provide that information to a province such as Ontario upon request. This is clearly a more privacy-protective and cost-effective solution, a real win-win solution: more privacy and security, lower cost. Surely there's no contest here.

Let me turn to another area which I feel is a very critical aspect of Bill 85: the use of radio frequency identification technology, or RFIDs, as I'll refer to them. For any of you who may not be familiar with RFID technology, I'll give a very brief introduction to the topic, and I do mean brief. RFID, as you know, is a generic term for a variety of technologies that use radio waves for the purpose of automatic identification, consisting of two integral parts: a tag and a reader. For the tag, you can think of a bar code on steroids. It's a bar code because it's an identifier, and it's on steroids because it beams out where it is. There are two main types of RFID tags, active or passive, which differ depending on whether they have their own power system. A passive tag has no power source and no on-tag transmitter, and that's what's being contemplated now in the EDL program. Finally, you need to know that RFID tags are activated by readers, wherever they may be, which in turn are connected to a host computer. In a passive system, the RFID transmits a signal via the air waves that wakes up the tag by powering up its chip, which in turn enables it to transmit data. So in the kind we're contemplating on the EDL, the chip contained in the driver's licence is asleep until it's, as they say, pinged. So a reader pings it and says, "Is there anybody out there?" If you have an active, meaning a functioning, tag, it will receive the message and be woken up and say, "Yes, I'm here," and it will release, via the radio frequencies, via the airwaves its identification number. We'll talk about that in a moment.

I should just tell you for your information that I've spent a number of years working in this field trying to secure privacy within RFID technology. My office has produced three papers and a set of practical guidelines on the subject going back five, six, seven years. I'm not

opposed to the use of RFID tags across the board, as many privacy advocates are. I'm a pragmatist and proud to call myself a pragmatist. It's got to be practical; it has to be real. I believe that RFIDs can have many benefits, but like all information technologies, they need to have privacy protections baked into them early in the design of the systems involved. I call this "privacy by design." This is a term that I first developed in the early 1990s, which ensures that privacy does not become an afterthought, because it has to be built right into the system. Tagging things in areas such as the supply chain management process or taking an inventory of assets poses no risk to privacy. That's why I haven't objected to the use of RFIDs when there are no privacy concerns, when there are no individuals involved in supply chain or inventory of assets. However, tagging things linked to people can raise serious concerns about the relative permanence of the tag, the nature and amount of data to be collected and the strength of the data's linkage to personally identifiable individuals. That's what's key: data linkage to personally identifiable individuals, in addition to the sensitivity of the data involved. Once you have the possibility of data linkage, allowing for individuals to become identified, that's when privacy concerns arise.

How does this relate to Bill 85 and EDL? Currently, US customs and border protection, CBP, uses RFID technologies on its trusted or registered traveller programs, such as Nexus, at designated land border sites in order to "expedite the processing of pre-approved, international, and low-risk commercial and commuter travellers crossing the border." The Department of Homeland Security requires that any approved border travel document carry an RFID tag, and that's what brings us to all of this, because you might say, "Why do we need this?" And that's a question you can pose to others. That is not the issue I'm going to address. I want to tell you that at the program we had in the summer—the public forum—we had a number of people who spoke out in favour of the EDL. I'm going to quote from one of them.

Arlene White was the executive director for the Binational Tourism Alliance, a not-for-profit trade organization created to support tourism in cross-border regions shared by Canada and the United States. She spoke at the summer forum, as I mentioned, about the vital importance to border communities and their very strong support for this program. I was surprised, actually, and after her talk, during question period, I asked her a question: "Are you telling me that having the RFID capacity to cross the border when you're in the car is really going to enhance speed that fast and it's really going to make a difference?" She said, "Absolutely." She emphasized the desire of these individuals in the border towns to ensure the continued smooth flow of traffic at their borders which, in her view, would simply not be possible without this RFID technology. I'm only reporting that to you; I can't substantiate that or not. But that is not only her view but the view of her group, so I wanted to pass that on.

Let me give you some sense of what all this means with respect to privacy and security. A fundamental



characteristic of all RFID technologies is, as I said, that they're wireless. This means that any data contained on the chip—in this case the unique index number, which you heard about earlier, which is stored on the embedded RFID chip—is transmitted through an RFI reader that pings it to a database of information. This number serves as a pointer to the individual's personal information contained in the database—

**Mr. Gilles Bisson:** What's the number?

**Dr. Ann Cavoukian:** I'm calling it the unique index number, and it is what is pinged and transmitted and collected. Then, that is used as a pointer in the database to access information needed for border crossing purposes. There are well-known privacy and security vulnerabilities associated with RFID technology. These are commonplace. They apply to any RFID-enabled identification card and information system. I'm going to mention just three of them.

One is skimming. This occurs when an individual with an unauthorized RFID reader gathers information from the chip on the card without the cardholder's knowledge. Remember, the RFID is emitting radio frequencies that can be picked up by any reader in the area, authorized or unauthorized. It doesn't discern which reader it should transmit the radio waves to. If you have an unauthorized reader and you're in the area, you can pick up the information that is accessible. That's skimming.

Number two is eavesdropping. Eavesdropping occurs when an unauthorized individual intercepts data using an unauthorized RFID reader. So not only can you access the information, but you eavesdrop. You pick up the information.

Third is cloning, which occurs when the unique information contained on the original RFID chip is read or intercepted and its data are then duplicated; a copy of it is made.

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These vulnerabilities could lead to a host of undesirable consequences, such as unauthorized identification, identity theft and, most serious, the surreptitious tracking and surveillance of individuals. Say goodbye to privacy.

In response to some of these concerns, you have been told that the RFID Gen 2 standard, which is the standard being used for this EDL—which again, I will repeat, is being required by US Homeland Security, so it's something we must use. This standard does not include any personally identifiable information, you've been told. It only has a unique number, this index number, which links the cardholder to his or her record in a database. So people say, "There are no privacy concerns, right? It's just a unique number." Wrong. Think of a social insurance number. A social insurance number is just a number. It's a string of digital identifiers. Think of a passport number; think of a driver's licence number. In and of themselves, they're just a string of numbers of no use to anyone who finds them. But once you link it to personally identifiable information, each of these numbers can be subject to great abuse by unauthorized parties or they can be used for unintended purposes that may cause

real harm to real people. Just think of identity theft as a case in point.

So a number, when uniquely linked to an individual, is not inconsequential. It's not just a meaningless number. It points to real, personally identifiable information that may then be subject to abuse. When you think of the social insurance number, it's often referred to as the key that will unlock many doors, because the social insurance number is unique to you. It is a unique personal identifier that of course, as a string of numbers, 441-451—I guess I shouldn't give you the rest of my social insurance number. I know it by heart. But the point is, it is linked to me, and once it's linked to me, a lot of personal information is enabled. In the United States, the social security number: the same thing; the same fears associated with it. That's the golden key.

So I just want to make this point: that just because it's a number and it doesn't have a name linked to it does not mean it cannot be linked to personally identifiable information. That's what we emphasized in our papers on radio frequency identifiers. The capacity for data linkage is what creates the privacy risk. Regardless of the contents of the data stored on the chip, if that data is both static and accessible via an unauthorized reader or network of readers, then the cardholder's identity may be ascertained and the individual can then be tracked without his or her knowledge. Even if the data on the card cannot be associated with existing personal information about the cardholder, it could be used to collect information in the future. I know that this sounds like a really wildly futuristic scenario, but I assure you it is not that far off. In the here and now, right now, identity theft is on the rise and is now considered by both Canadian and American law enforcement agencies to be the fastest-growing form of consumer fraud in North America, much of which is due to organized crime having now entered into the scene en masse. This is an area we have to be concerned about and watch out for.

Currently, the suggested method for allowing cardholders a measure of privacy and security is to provide them with an electronically opaque sleeve called a Faraday cage, which would prevent communications to and from the RFID chip if the card were encased in this sleeve. Some call it the Dorito chips method of protection, because a Dorito chips bag has aluminum foil, and that essentially does the trick. But in my view, this is not a sufficient answer. The cardholder must take on the added inconvenience. But also you have to remember to put your card into the device, and I don't think it's going to happen.

Could someone give me a credit card, if you would? Thank you. Here's a driver's licence. Here's the Faraday cage. First of all, I have to get it in the cage. Maybe more of you are better than I am—here, I got it in, but it takes some doing. Then I have to put this in my wallet. I can tell you, this will not fit into the little tiny thing—the slides that are available in your wallet now? It won't fit with this. So people are going to make a choice. They're either going to say, "To heck with this; I want to keep it



in my wallet,” which is the whole point of the exercise, or they’re going to try to do this and they’re going to get fed up with it and they’re going to abandon it. In my estimation, this is not an acceptable solution.

I don’t want you to take my word for it. If you go into the literature at all in this area, everyone—the techies—all laugh at this as the solution to the problem. This is not an acceptable solution in the literature among both technologists and privacy advocates.

In my view, again, it’s not the answer. The cardholder has the added inconvenience and has to remember to put the device in the Faraday cage.

This proposed protective sleeve, when offered as the only privacy measure, would realistically mean that the card would allow, by default, the collection of stored data or the unique index number by unauthorized RFID readers until the cardholder remembered to actually place it successfully in the card sleeve. This solution is only protective when the individual remembers and succeeds in placing the card in the sleeve; otherwise, the reading of the cards are free and clear.

I’m going to read you a quote in a moment, but I have to tell you, there are groups of people—what are they called? Wardrivers?

**Mr. Gilles Bisson:** Wardrivers?

**Dr. Ann Cavoukian:** Wardrivers. I know; it’s a weird term. They’re techies who do this for fun. I don’t want to call them “hackers” because many of them are good hackers, but they drive around, and it’s what they do for fun. Instead of playing a video game or something, they drive around and they try to pick up signals from RFIDs. You would not believe how successful they are. They drive around and they have their unauthorized readers on and they try to intercept signals. I don’t do this, but I know of people who have done this, and they tell me how successful it is to do it.

Even leading researchers, such as Sophia Cope, staff attorney and fellow at the Center for Democracy and Technology, agree that this method of the Faraday cage is hardly sufficient. In her testimony before a Senate committee in the United States on the implementation of the REAL ID Act and the western hemisphere travel initiative, Ms. Cope stated that privacy risk mitigation measures such as the Faraday sleeve will “improperly place the burden of privacy protection on the citizen. Moreover, they offer no protection in light of the fact that the EDL will be used in many circumstances where drivers’ licences or ID cards are now required, including in many commercial contexts where individuals will be taking their cards out of the protective sleeve, thereby exposing their data to all the risks we have described above.”

She’s going farther than me. She’s saying that even if you use a Faraday cage, at some point you’ve got to take it out of the cage in order to actually have it be successfully used for whatever purpose it was intended. At that point in time, it is subject to all the risks we were talking about, in terms of skimming, eavesdropping and interception.

In Ontario, people often use their drivers’ licence, as you know—

**Mr. Gilles Bisson:** So it transmits once it’s out?

**Dr. Ann Cavoukian:** When it’s out of the Faraday cage, it is always on. So while it has to be pinged by a reader to get the information—

**The Vice-Chair (Mr. David Orazietti):** If we can hold the questions until the presentation’s over; if we can just hold the questions until—

**Mr. Gilles Bisson:** We’re not going to get any questions. That’s why I’m doing it right now.

**Dr. Ann Cavoukian:** Okay. In Ontario, as you know, people often use their driver’s licence when asked for government-issued photo ID. We have all been in instances where you use your driver’s licence for ID: to vote, open up a bank account or apply for a credit card; multiple purposes. So the driver’s licence is used for many purposes other than for driving, and I’m suggesting that it’s going to be used for many purposes other than just crossing the border. That’s why we need to make it as protective as possible.

As the RFID standard chosen for this project will respond to any reader query, any pinging, I feel that the card must have some means of preventing it from being read when not required when used for multiple purposes other than border-crossing purposes. A better solution than the proposed sleeve is needed.

The way that I always proceed is to go off and look for those solutions, because I always figure that if you’ve got a problem, you’ve got to find the solutions and offer them to people. I think we found a solution. One of the best options that I’ve heard of would be to give the cardholder the option of physically verifying the selected transmission setting, meaning, adding the equivalent of an on/off switch to the RFID card, which can then be incorporated, as I said, directly on the card. So wouldn’t it be cool if you could turn it off—just on/off? Wouldn’t that be a wonderful thing?

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I’m not proposing this based on yet-to-be-developed technology. My team has been very busy scouring the corners of the globe to find some solutions, and we have found some. Several groups are developing this on/off switch. I’ll name three.

At MIT, the media lab has already patented and prototyped an on/off switch for an RFID tag that can be incorporated directly into a card, allowing the cardholder to determine when and where their information will be transmitted.

Even better, though, another company based in the UK—this one is really good—called Peratech, has advanced this on/off switch even further. They’ve developed it using something called quantum tunnelling composite technology. Don’t ask me to explain that to you. But I know, because my tech people have looked into it, that it is advanced technology and the founder and CTO of Peratech, David Lussey, advised me that, and I quote—we spoke directly to him—“Peratech’s technology is readily available under licence for the appli-



cation of acting as an on/off switch on an RFID driver's licence. It has been fully proven to work reliably in the typical hot-lamination manufacturing process used by all the major RFID card manufacturers and it is just a matter of cents, not dollars, that we're talking about." So this, to me, is indeed very promising technology.

But there is a third company in the United States, called Root Labs, which is working on a similar on/off switch that would be placed on transponders to be used by San Francisco Bay highway toll users.

I give you these three examples because people say, "Well, there are no alternatives." There are alternatives, and we make a point of finding those alternatives and offering them as solutions.

I brought together representatives from our government and the vendor that has been selected to produce EDLs in Ontario, hoping to advance this very promising technology that I believe should be seriously considered for EDLs in Ontario. I thought it was necessary to bring everyone together with the goal of advancing the feasibility and the development of this very promising technology. In fact, a senior executive from the government's own selected vendor told me the following: "We are aware of the developments of new and emerging technologies that provide the means to personally control RFID transmission of data with an on/off switch on a card, such as Peratech's QTC technology. Furthermore, Giesecke & Devrient," otherwise known as G&D, the vendor of choice in Ontario, "is working diligently on the development of our own technologies and assessment of third party technologies to enhance RFID functionality, security and privacy."

This is wonderful to me. These present viable options that can be pursued, and I ask you to stay tuned because, rest assured, we will be exploring these with the Ministry of Transportation and with the selected vendor.

Let me shift gears now and give you just a little bit of perspective by way of background on privacy and technology, and I'll be ending it shortly after that.

Since the early 1990s, I've been advancing the idea that technology has the ability not only to provide for good security but also to provide for good privacy. In 1995, I put forward the view that technology can liberate us from what I called the zero-sum trap of having to sacrifice privacy in order to have security. When you think of a zero-sum game, it requires an advancement of one interest at the expense of the other, and when you have security versus privacy, invariably privacy loses. So that's why I have developed this, what I call a positive-sum paradigm. Forget zero sum. I want you to give me both security and privacy, together in the same device.

We cannot view privacy and security as polar opposites. In this view, in this new positive-sum, win-win scenario, privacy and security can both coexist because technology is enlisted to protect privacy and safeguard personal information through privacy-enhancing technologies, or PETs. When applied to technologies and surveillance, PETs can serve to transform these technologies into ones that are protective of privacy. Hence,

I've developed a new term—you might call it PETs-plus—and it's called transformative technologies. Why have I done this? I've done this because, whenever I enter into an arena talking privacy alone, privacy-enhancing technologies, "I want you to address privacy"—if I'm talking to a tech company or a security company or a business, invariably they lose some interest, because they think my focus is exclusively on privacy. That's not true. I want you to give me privacy as well as whatever else that technology is intended to do. So you want to do video surveillance cameras? You do that and you give me privacy, and we'll tell you how to do it. The University of Toronto has developed a very ingenious way of doing that. I digress, but PETs-plus is transformative technologies, and the reason is, if you talk about transformative technologies, you get the interest of the security companies and the biometric companies and the technologists. People listen, because I'm not asking you to abandon security for privacy; I'm asking you to give me both, and I'm insisting on both. They accept that messaging better.

I digress. Transformative technologies, using this positive sum paradigm, which just means security and privacy, embeds a privacy-enhancing technology to what would otherwise be considered a privacy-invasive technology: video surveillance cameras. You apply privacy-enhancing technology, you give me both privacy and security and you transform what would normally be considered a privacy-invasive technology—surveillance cameras—into a non-privacy-invasive technology, because when you apply what I'm talking about, the encryption program, to this technology, all you get—if you had a camera on me, you would just get the background footage; you would not get personally identifiable information relating to me unless you had the encryption keys. So that's why it transforms an otherwise privacy-invasive technology into a privacy-enabling one. I call this, as I've said before, privacy by design, and it is literally my mantra, the mantra of my office. Privacy can either be achieved through the use of PETs, by eliminating or minimizing the collection of personal data or by preventing the unnecessary and undesirable uses of personal data without losing the functionality of that technology. That is key. This can be achieved by keeping privacy in mind and embedding it into the design and architecture of new technologies—win-win, not either/or.

So in the spirit of all of this, I'm recommending the following with respect to the use of RFID technology in the EDL. First, I'm recommending that any use of radio frequency identification technology comply with the RFID guidelines set out by my office, and I've brought a few copies with me. We created these two or three years ago, and we've updated them recently. Second and most important, I recommend that the ministry work with a selected vendor to pilot test the privacy-enhancing technology of adding an on/off switch for the RFID tag embedded in the card. This will enable far greater protection of the card when not being used for border-crossing purposes, which means any time other than



crossing the border. I want to tell you that I have spoken directly to the vendor and to ParaTech and to these other companies, so I'm not leaving it up to chance. It is definitely within the range of possibility to do this. One of the biggest obstacles is the standard that has been offered by the US, the Department of Homeland Security, and we've opened up channels there. As you know, there is an election that will take place in the United States, there's the possibility of a change of administration. Who knows. Stay tuned. But we have recently spoken. Just two days ago I spoke to members of the Department of Homeland Security with a view to opening up the dialogue and changing the standard, which would enable this stronger protection to take place. So stay tuned.

Let me conclude by sharing a motto that my office developed some time ago and that we follow religiously. I call it the three Cs. Perhaps I should call it the four Cs, because it's a bit corny. But here are the three Cs: consultation, collaboration and co-operation. This philosophy represents the ethos of my office, and I think it's an attitude that we all share in my office. I know I carry it into our work regarding the EDL program. We want to make this work. We're not trying to throw up roadblocks, but we want to make it work in the most privacy-protective manner possible. So I'm not opposed to the EDL program. I have these concerns regarding privacy. They're outlined in our lengthy submission, and I feel they have to be addressed based on the mandate that the Legislature of Ontario has given me. I look forward to serving that mandate in the spirit of the three Cs.

Thank you once again for providing me with the opportunity to appear before you today and for considering my office's comments on Bill 85. I'm confident that with our continued collaborative efforts, we will be able to appropriately address any outstanding privacy matters and best serve the interests of the people of Ontario. In fact—and this is what I would like to do—we could develop the most privacy-protected EDL available anywhere in the world. We can do this here in Ontario, and it would be another first for Ontario because we shine in the area of privacy and technology. Hopefully, we can do that together. Thank you very much.

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**The Vice-Chair (Mr. David Oraziotti):** Thank you very much for your presentation. Mr. Klees, if you'd like, each caucus will have five minutes for questions.

**Mr. Frank Klees:** Thank you very much. Commissioner, I want to thank you and your team. I'm into my 14th year of hearings in this place, and without question your presentation today was one of the most enjoyable and informative presentations I've ever heard.

**Dr. Ann Cavoukian:** Thank you so much. You're very kind.

**Mr. Frank Klees:** I want to thank you for the stock tips as well

**Interjection:** Yes, we wrote them down.

**Mr. Gilles Bisson:** There's no such thing as a good stock tip.

**Dr. Ann Cavoukian:** I didn't know I gave stock tips.

**Mr. Frank Klees:** I don't know. Based on what I heard, I think we have some real possibilities. We heard from the minister earlier, and he made the point of saying that he's been consulting with you.

**Dr. Ann Cavoukian:** Yes, he has.

**Mr. Frank Klees:** I agree with him that I think we're very fortunate to have someone of your stature as an officer of the Legislature. I'm hopeful that the minister and his staff will in fact do what they said they'd do, and that is to take your advice seriously. We've seen this government in the past hear your advice and not take it, to its detriment. I'm going to be hopeful that the very solid presentation that you made and that the recommendations you've brought forward will in fact be taken back by ministry staff and that they will work with you. We will do what we can to hold the government accountable on these very important privacy issues. I'm convinced that the minister is sincere when he states his commitment to meeting the privacy issues and challenges. I've done a lot of reading on this as well, and I've put it to the minister that there are a lot of questions about the technology, so what's encouraging to me is the research that you and your office have done to bring what I believe to be real solutions to what all members of this committee, I'm sure, and all members of the Legislature are concerned about.

I have another question for you, though. I was surprised to hear you say that the application process for this card is as complex as you describe it. I've just gone through the Nexus application process, and from the sounds of it, it was more straightforward than what you're describing here.

**Dr. Ann Cavoukian:** You're right.

**Mr. Frank Klees:** I can now bypass, as you well know, all of the lines of security, and I'm on my way because of the pre-approval that I've gone through. But what you're talking about is actually more complex than what I had to go through, but those people don't have the benefit of a pre-approved card. Can you just comment on that? How do we cut through that?

**Dr. Ann Cavoukian:** I will. Thank you very much, Mr. Klees, for your kind remarks.

I'm going to ask Ken Anderson and Michelle Chibba to respond, because I couldn't believe it either. You would not believe the questions that these people have to answer. I couldn't believe it, so I'm going to ask directly. Michelle has them here. We're going to respond to this.

**Mr. Ken Anderson:** Michelle's put a lot of work in this area. She might start off, but I can tell you one thing—

**The Vice-Chair (Mr. David Oraziotti):** Please state your name for the purposes of Hansard. Thank you.

**Mr. Ken Anderson:** My name is Ken Anderson. I'm the assistant commissioner for privacy, and my colleague Michelle Chibba will comment after me.

We have, in working on this file, also met not just with ministries in Ontario but also with federal counterparts that are a part of the entire system. We too have



been surprised at the nature and extent of the application process, and we had asked questions saying that we don't have to do this for a regular passport, so it's rather surprising to do this. The sense we had was that you don't have to do that now, but maybe at some point that would change. Certainly Michelle could tell you some of the questions in the process.

**Ms. Michelle Chibba:** I'm Michelle Chibba, director of policy at the IPC. What we've taken, in terms of public information that we're allowed to share, is the model that the BC government is currently using. Our understanding is that it's the same set of questions that have been provided by the federal government that all provinces who implement an enhanced driver's licence—that any applicant will have to go through these questions.

The questions are—and I'd like to ask these questions so that you can also think about what the answers are:

—Were you born in Canada?

—At the time of your birth, was one of your parents a foreign diplomat, consular office or representative or employee of a foreign government recognized by the Canadian government?

—Have you ever renounced or given up your Canadian citizenship? If yes, please provide the date you renounced it.

—Did you ever take or sign an oath renouncing your citizenship before February 15, 1977? If yes, please complete question (e). If no, skip (e) and go to question (f).

I will ask you question (e): If yes to question (d), were you under 21 years of age at that time?

—Did you become a citizen of another country before February 15, 1977? If yes, please complete question (g). If no, skip (g) and go to question (h).

—Question (g) is: If yes to question (f), were you under 21 years of age at that time?

—Did one of your parents ever renounce or give up their Canadian citizenship before February 15, 1977? If yes, please complete question (i). If no, skip question (i) and go to question (j).

—If yes to question (h), were you under 21 years of age at that time?

—Did one of your parents—

**The Vice-Chair (Mr. David Oraziotti):** I'm sorry, we're a minute or so over the time. I thank you, Mr. Klees, for your time—

**Mr. Gilles Bisson:** Go ahead. She can use some of my time to respond. Please.

**The Vice-Chair (Mr. David Oraziotti):** Okay.

**Mr. Gilles Bisson:** Go ahead. You were going to respond?

**Ms. Michelle Chibba:** No, I was just going to say the last question: Did one of your parents become a citizen of another country before February 15, 1977?

**Mr. Gilles Bisson:** So what good does this do us?

**Dr. Ann Cavoukian:** I have no idea.

**Ms. Michelle Chibba:** Sorry, we can't—

**Mr. Gilles Bisson:** So this is the questionnaire that would be asked in order to gather all this information?

**Dr. Ann Cavoukian:** Yes, plus a live interview with someone. Really, for any of you who have gone through the passport process—now it's really easy to get your passports renewed. Once you have it done once, you no longer need a guarantor; you can do it online. It's a piece of cake. This is much more cumbersome to me and it's unnecessary. We know who the citizens are, we know—anyway, I'm not going to belabour the point, but that's what this is about.

**Mr. Gilles Bisson:** Let me ask you a very simple question. In its current state, would you support this legislation if you were me?

**Dr. Ann Cavoukian:** That's a trick question.

**Mr. Gilles Bisson:** It's not a trick question. We both support—

*Interjection.*

**Mr. Gilles Bisson:** No, do it on your own time.

Everybody in this House agrees that this is not a bad idea. My concern, and the reason that I asked for you to be before this committee, is that I have some security concerns. I don't pretend to understand it in detail, and that's why you're here. So my first question is, in its current form, would you support this legislation if you were me?

**Dr. Ann Cavoukian:** I would like to see the legislation strengthened. In our submission, we have very detailed language and procedures that can tighten it, wouldn't you say so, Ken?

**Mr. Ken Anderson:** Yes.

**Dr. Ann Cavoukian:** And I'm confident that Ministry of Transportation staff will work with us, as they have been working with us very co-operatively, and I expect them to be responsive to our recommendations in our submission.

**Mr. Gilles Bisson:** You have 20 recommendations that you've given us. This may be a bit of an unfair question: Are these all must-dos, or are some of them more must-dos than others?

**Mr. Ken Anderson:** There's always a sense of gradation, I suppose, when one reads a list. We think that they're all important. We have the sense that they're all doable and we're working very hard to ensure with the ministry that it's completed on behalf of Ontarians.

**Mr. Gilles Bisson:** My next question is that—and we only get five minutes; this is the unfortunate part. You're saying that we need to have a public consultation around the regs, because we all understand that this is all going to be left up to regulation. If there isn't a spelled-out process in order to have public consultation on the regs, should I support this?

**Dr. Ann Cavoukian:** I can't answer that for you. That is a matter for your conscience.

**Mr. Gilles Bisson:** I hear you. You gave me the answer I was looking for.

How much time have I got?

**The Vice-Chair (Mr. David Oraziotti):** About a minute or so.

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**Mr. Gilles Bisson:** The unfortunate part is—and I throw a pox on all our houses, all parties that have been



in government—we've rushed this type of legislation through. Listen, it's my fault, it's your fault, it's all our faults. We try to rush this type of legislation through without giving it the type of consideration that we need in order to get it right. What I fear is—we're trying to do the right thing here—if we don't take the time to figure out what technologies to use and how to do it to protect privacy, we may be going down quite completely the wrong road. So I just want to put on the record that I find this somewhat rushed. Actually, I would propose a motion at this point that we bring you back before this committee next week for some more time, because we need to ask some pretty specific questions.

I would move a motion that we bring you back before this committee next week so that we can ask you some questions, so that we have a better sense of what it is that we need to do as legislators.

**Dr. Ann Cavoukian:** I should just say that I'm confident the ministry will be responsive to our recommendations and I look forward to working with them. I think we can really improve the legislation.

**The Vice-Chair (Mr. David Oraziotti):** Okay, thank you very much. At this point, the subcommittee has made a recommendation. If that changes before next week, then I think that's a matter for the subcommittee to discuss. At this point, we're going to move on to the Liberal caucus for—

**Mr. Gilles Bisson:** Chair, point of order: To the clerk, it's well within my right to move a motion at this time, so I'm moving a motion that we bring the privacy commissioner before us next week.

**The Vice-Chair (Mr. David Oraziotti):** Any debate on the motion?

**Mr. Gilles Bisson:** No debate? I take it we're all in favour of—

**The Vice-Chair (Mr. David Oraziotti):** Seeing none—

**Mr. Gilles Bisson:** Recorded vote.

**The Vice-Chair (Mr. David Oraziotti):** Mr. Brown?

**Mr. Michael A. Brown:** I just wanted to point out that from the government's point of view, we take direction around here on the basis of consensus. The subcommittee has met. The subcommittee made recommendations. If you wish to take this up with the subcommittee, I think that would be totally a real possibility. If not, however, we would be pleased to vote.

**Mr. Gilles Bisson:** This issue has been raised by the subcommittee and it's something that we talked about. My specific request during the subcommittee time was that we be given enough time at committee to make sure we hear what we need to hear to do our jobs here as legislators and if we needed more time that we would use it. That's why in the subcommittee report we're talking about extra days if needed. I think what we are hearing here today is that the commissioner is supporting the general intent of the legislation and all members of this Legislature are; nobody is opposed to the idea, we just need to get it right. I would ask that we have a vote on having her come back before this committee so that we

can ask some questions in order to make sure that we understand what some of these concerns are.

**Mr. Michael A. Brown:** In order to be very helpful, I would suggest that we ask the member if he would like to wait till after the proceedings are finished today—

**Mr. Gilles Bisson:** No, I want the vote now.

**Mr. Michael A. Brown:** —which shows to me that we're done by about 5 o'clock or 5:30. There's plenty of time to discuss it then—

**Mr. Gilles Bisson:** No, I would ask for the vote.

**Mr. Michael A. Brown:** —and we can then vote. I think that's a reasonable and sensible way to order the committee's business.

**Mr. Gilles Bisson:** Again, I think—

**The Vice-Chair (Mr. David Oraziotti):** Just one second, Mr. Bisson. There's a motion on the floor at this point, so any further debate on that motion? Ms. Mitchell.

**Mrs. Carol Mitchell:** Yes. I just wanted to speak specifically to this motion as a member of the subcommittee. We specifically allocated an hour of time for the privacy commissioner—

**Mr. Gilles Bisson:** Thirty minutes

**Mrs. Carol Mitchell:** —on the recommendation of the subcommittee members. We read into the record the recommendations at the very beginning and this is the hour that we had agreed upon prior to the hearings. So I just wanted to make the committee informed of that subcommittee decision.

**The Vice-Chair (Mr. David Oraziotti):** Further debate?

**Mr. Gilles Bisson:** I was on the subcommittee as well and it was pretty clear that my recommendations and my concerns were that we had to do this right, that the New Democratic Party supports the initiative the government is putting forward, but we need to make sure we get this legislation right. I asked, at the time of the subcommittee, if more time was needed that we take that time. I said we would not try to delay this legislation in any way, we just want to make sure we get it right. I think there are some very important points that have been brought before us by the privacy commissioner. She is the most knowledgeable person on this issue in the province of Ontario and we need the time, as legislators, to get it right.

**The Vice-Chair (Mr. David Oraziotti):** Further debate?

**Mrs. Carol Mitchell:** The specific request of the subcommittee was that the privacy commissioner be allocated an hour within the hearings and we specifically allocated an hour for the presentation and for rotation of questions. That was the recommendation coming forward and I just wanted to state for the record that was clearly the discussion that happened at the subcommittee.

**The Chair (Mr. David Oraziotti):** I think the point on the issue has been made. You have a motion on the floor—

**Mr. Gilles Bisson:** I disagree, because I was there, and I know darn well what was said.

**Mrs. Carol Mitchell:** As was I. You voted on it.



*Interjections.*

**The Chair (Mr. David Orazietti):** Committee, the question has been put.

All in favour of having the commissioner come back?

**Mr. Gilles Bisson:** Recorded vote.

**Ayes**

Bisson.

**Nays**

Bailey, Brown, Brownell, Kular, Mauro, Mitchell.

**The Vice-Chair (Mr. David Orazietti):** The motion is lost.

We're going to continue with the five minutes of questions for the Liberal caucus. Proceed, Mr. Mauro.

**Mr. Bill Mauro:** Thank you very much for the presentation. Just quickly, because another member has a question for you as well, I want to confirm a couple of things.

One, you stated in your remarks that you're not opposed to the RFID technology. We already know that people who are interested in the EDL would do so on a completely voluntary basis. So I guess they would be aware through the process what it was they were entering into.

Given the technology, I'm not completely following what you're suggesting is the privacy risk, as you described it. As I understand it, once the embedded chip is pinged, it wakes up and transmits data. The data that's transmitted is simply a unique identifier, so if anybody was scanning the card—if it didn't fit in the slot and it wasn't in the wallet or any of that—what the illegal scanning would get would be the unique identifier number only. I'm not clear, especially when you went further in your example. You talked about the video camera and the encryption being such that it would only show the background and not the face. I'm making a bit of an analogy here. The person who scanned my chip illegally, what is it that they would be getting specifically, unless they have access to this database, that concerns you? That's specifically my question. It seems to me you're making a bit of a jump.

**Dr. Ann Cavoukian:** It is a jump. You're right, it is a jump, because then you have to have the number, and then you have to access the database. We're talking—

**Mr. Bill Mauro:** Exactly. So this is a border services database; that's the piece I need closed for me here.

**Dr. Ann Cavoukian:** I should have brought an example with me. Just last week or the week before—is it the Mifare?—an RFID chip was hacked.

**Mr. Bill Mauro:** Which chip, I'm sorry?

**Dr. Ann Cavoukian:** Is it called Mifare?

**Ms. Michelle Chibba:** Mifare.

**Dr. Ann Cavoukian:** There's an RFID chip called Mifare, and it was hacked, meaning that the database the information pointed to was hacked into. I can give you an

example of that. Yes, this is done in an unauthorized way; there would be hacking involved. But what I'm saying is that is not as difficult as you might think. I have no idea how to do it, but—

**Mr. Bill Mauro:** Okay, but the—

**Dr. Ann Cavoukian:** If I could just finish. The technology experts who are out there are the ones saying the hackability of this information is high. This is not difficult to do.

**Mr. Bill Mauro:** So with respect, then, you're suggesting that the database that these people with my number could hack into is a federal American government border services database? Because that's what I think you're saying.

**Dr. Ann Cavoukian:** It's a Canadian database, and my colleague has been—

**Mr. Bill Mauro:** If I'm trying to get into the American side, I'm being—this is coming back.

**Dr. Ann Cavoukian:** Coming back, it pings the Canadian information because your information as a Canadian resides in the Canadian database, and the American border crossing people want to access the Canadian database.

**Mr. Bill Mauro:** So you're saying those federal government databases—I would suspect somebody could hack that now, whether or not they have my unique identifier number, so I'm not sure how in any way we would be changing that.

**Mr. Ken Anderson:** I'll just build a scenario for you. People come to our office quite a bit to talk about ID theft. What has happened, and I think the commissioner alluded to this, is that with ID theft, more and more the issue has become that organized crime is involved. What they need to do is build up a whole series of profiles for various bad consequences.

Normally, you may have persons in Ontario who protect their driver's licence, they're very careful with their credit cards, and they don't give out information. They apply for this driver's licence, they go up to the border, and the Canadian Border Services and the Ministry of Transportation in Ontario are working very hard to keep that protected. But away from the border, if the card is not protected, you can have these hackers who are purposely going in, getting the number to go off to the database—which actually resides in Ottawa, not in the States—and it has all of this driver's information. They bring up the information, and they set up cards and passports and other identification which are clones, so the commissioner referred to cloning.

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**Mr. Bill Mauro:** So they can hack the databases—

**Mr. Ken Anderson:** And then they can hack these databases. What you don't want is all of this extra ID.

**Mr. Bill Mauro:** With or without this number, though?

**Mr. Ken Anderson:** Yeah.

**Dr. Ann Cavoukian:** If I could just add one other comment, the other concern is also with the tracking and surveillance capacity of the RFID. My colleague



Michelle Chibba is going to speak to the tracking capacity.

**The Vice-Chair (Mr. David Oraziotti):** We have about a minute. Mrs. Mitchell would like to ask her question, so if you could—

**Dr. Ann Cavoukian:** Oh, okay. Tracking and surveillance, remember that as well—very important.

**Mrs. Carol Mitchell:** You talked about the consultation that you went through with the tourism industry. You heard their concerns. You know what this is trying to address. What I need to hear from you is, how commercially viable is it? What you've talked about today was, from MIT, a patent, a prototype; it's promising technology. That is a long way away from commercialization, and I'm sure you heard from the tourism industry how we need to move forward. This is something that homeland security is asking this has to be a part of—if it is not a part of it, then therefore it is no solution in their minds.

I guess what I'm saying is, we know how slow things can turn, so do you have an estimated time that it would take for it to become more than a prototype?

**Dr. Ann Cavoukian:** First of all, you're absolutely right: That is a prototype, and that is probably the least advanced one. I'm not suggesting that we hold up development of the EDL, which is being widely sought-after by the border communities. So I am not proposing stopping it.

What I'm proposing is continuing to do our work with the second company that I mentioned, Peratech, out of the UK. Theirs is not a proof of concept; theirs is here right now. It is being manufactured in their factories in the UK. It is a commercially viable technology. They could work with G&D, our vendor, and make this happen, not in time for the June rollout but for our rollout in another year, for example, the second iteration of the card. Not only is it commercially viable, we could make history in Ontario by developing this card with an on/off switch. It has not been done widely, so imagine if we produce this EDL in Ontario with this on-off switch for the first time ever and we sing its praises around the world. Not only would it be commercially viable, we would create a market need because everyone around the world is grappling with these problems about RFIDs; everyone has these issues. We could wave around this amazingly successful EDL with this on/off switch. We'd be making history and you would get a great, commercially viable product.

**The Vice-Chair (Mr. David Oraziotti):** And on that note, thank you very much for being here today and for your presentation.

*Interjection.*

**Dr. Ann Cavoukian:** No, I did answer; how did I not answer your question? You said, "How is it commercially viable?"

**The Vice-Chair (Mr. David Oraziotti):** I'm sorry; the time for questions is completed.

*Interjections.*

**The Vice-Chair (Mr. David Oraziotti):** Thank you very much.

## COUNCIL OF CANADIANS, ONTARIO-QUEBEC REGIONAL OFFICE

**The Vice-Chair (Mr. David Oraziotti):** Next we have a presentation by the Council of Canadians, Ontario-Quebec regional office, Stuart Trew. If you'd state your name for the purposes of Hansard, you have about 15 minutes for your presentation. Any time that you do not use for your presentation will be divided equally among the caucuses for questions. You can start when you're ready.

**Mr. Stuart Trew:** First of all, thank you very much to the committee for hearing from the Council of Canadians on this issue. Before I start, I just wanted to emphasize that the council is not opposed to the entire Photo Card Act; in fact, as you'll probably hear from the representative of the advocates for the equality of blind Canadians later, having a photo card that acts as an official ID for people who don't necessarily drive is quite useful and we completely support that. We are opposed to the enhanced driver's license and the enhanced photo card that is also a part of this legislation.

Founded in 1985, the Council of Canadians is Canada's largest citizens' organization, with about 60,000 members and over 70 volunteer chapters across the country. We work to protect Canadian independence and strengthen local, provincial and national democracy by promoting progressive policies on fair trade, clean water, energy security, public health care and other issues of social and economic concern to Canadians. Much of our work falls under the umbrella of warning Canadians about the perils of deeper economic and security integration with the United States, and it is through this lens that I wish to approach our significant concerns with the proposed enhanced driver's licence in Ontario and across the country.

Despite the lack of a national discussion on new security technologies and an overwhelming rejection of the idea of a national ID card after it was proposed by the Chrétien government in 2002, the current Conservative government is encouraging provinces to create the so-called enhanced drivers' licences—EDLs—as an alternative to passports for crossing the Canada-US border. These new licences would contain biometric information such as a person's nationality, new security features like a barcode for proximity scans, facial recognition technology and a radio frequency identification chip that can be read by border agents at a distance of at least 10 metres. The new technology is being created to satisfy unilateral US demands in the western hemisphere travel initiative that anyone entering the country after June 2009 have a valid passport or some other secure document to prove nationality.

The Canadian government and the provinces are selling the EDL as a convenient way to get across the border quickly for those who might not want to buy a passport, although it should be emphasized that the proposed cost of Ontario's EDL—\$75—is only \$12 less than what a Canadian passport currently costs, and that



the federal government will be enhancing passports and extending their life from five to 10 years very shortly.

So far, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec have all announced enhanced driver's licence projects. The Atlantic provinces, it should also be noted, have decided to hold back in case the next US president decides to scrap the technology and tone down the security rhetoric coming out of his administration.

While some may see this technology as a harmless and voluntary means of crossing the border a little quicker without a passport, we see it as unnecessary, invasive and a backdoor approach to a North American ID card. EDLs will not make us safer from terrorism and they will not ease traffic flows at the border, but they will pose significant privacy concerns related to flawed technology and hazardous information-sharing agreements with the United States and other governments.

I've called this next section—just to highlight that Canada's privacy commissioners have disapproved of the EDLs. In February 2008, commenting on the EDL project in British Columbia, Canada's federal and provincial privacy commissioners issued a statement that no EDL project should proceed on a permanent basis unless all the information required from participating drivers remains in Canada. While information on individuals in Canada may cross borders, Canada's privacy laws cannot, and similar US laws only apply to US citizens.

The United States government is under no obligation to protect that information and could, if it wanted, use it to create profiles on any number of Canadians in order to restrict or more closely monitor the movement of certain people it considers threats to national security. This would likely be unconstitutional in Canada. Contrary to the assurances of the Ontario Ministry of Transportation, there is nothing that the Ontario or federal governments can do to make sure that US security agencies do not collect and store our personal information on independent databases. We can have a database in Ottawa, but information is information; it can be held anywhere.

We know that despite public opposition, the US government continues to work towards a system where various unrelated databases can be linked in order to mine for certain behaviours and to risk-score travellers based on various expanding criteria. Since it will be even harder to challenge your US score than it would be to challenge your score in Canada, why should we be making it easier for the US government to set up such a system on a North American scale when a passport will do the trick?

"Voluntary now" does not mean "voluntary later." Clearly, the usefulness of EDLs depends on their widespread use. For instance, if you're in a car with four friends and two of you have an EDL, you're still going to have to stop and the other two are going to have to get checked out. The Department of Homeland Security has already said that it wants to expand its own EDL program, which comes under the auspices of the REAL ID Act, which forces all US states to develop compatible

drivers' licences and create linkable databases containing the personal information of cardholders. This is the template for the Canadian version.

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Currently, US EDLs will be used to board federally regulated airlines and enter federal buildings. We don't know how the system will be expanded, but one can easily imagine other situations where state agencies will find it irresistibly easier to scan a driver's licence for instant access to a person's profile. This is sometimes called "mission creep." Maureen Webb, human rights lawyer and activist, predicts that EDLs or other forms of biometric identification could become mandatory for travel by any means within or outside the continent, as they are becoming in Europe.

As you've heard today, the Department of Public Safety is working with the provinces and the US Department of Homeland Security to set common standards for the various provincial ID cards being planned. Documents acquired through access to information requests in the United States show that bilateral discussions related to a "one card" solution to travel security were being held through the Security and Prosperity Partnership as early as 2005, and such a card is clearly in the spirit of the 2001 Smart Border Declaration and Action Plan.

Neither the 2005 SPP nor the 2001 smart border agreement was debated by the Canadian or American electorates or voted on by our politicians. As Roch Tassé of the International Civil Liberties Monitoring Group has said, the provincial EDLs appear to be "a classic case of 'policy laundry,'" where the provinces are being asked to introduce measures that the federal government could not when it failed to secure support for a national ID card. More than this, the EDLs appear to be a way to sneak a North American ID card past Canadians, who clearly voiced their opposition to a national ID card in the recent past.

As we've heard today—we've learned it from the privacy commissioner—there are significant privacy concerns with the RFID chips, which can be surreptitiously scanned by anyone with a device capable of reading the signal at a distance upwards of 10 metres. At the request of the Department of Homeland Security, Ontario and the other provinces are adopting the passive UHF EPC Gen 2 tag, which is always sending unless it's inside a protective case, instead of a more secure document that could only be read at a proximity scanner closer to the border.

As privacy expert and University of Toronto professor Andrew Clement has said, the onus must be on the government to protect all private information it gathers on its citizens, including the unique RFID number, which does count as personal information, and not on citizens to remember to cover their cards once they have been scanned by border agents. It is conceivable that surreptitious RFID scans could occur outside the border region—in malls, banks and other public spaces—linking the unique number to other activities without the cardholder's knowledge.



There are also issues with the facial recognition technology, which is unreliable and could produce thousands of false positives at the border. Even with an error rate of 1% or 2%, the number of Canadians who could be pulled aside and harassed by US or Canadian officials who have mistaken them for a terrorist, criminal or other person of interest is enormous and will certainly lead to increased delays at the border, especially considering that there are over one million names on the current US terrorist watch list.

The potential for abuse of this system, I believe, is very high also. Voluntary or not, EDLs, like the Nexus card, which is reserved for trusted, high-value customers to the United States or Canada, will potentially stratify mobility rights along racial or class lines. Already the border has become a source of racial profiling as people from certain countries deemed high risk by the US government are harassed with little or no evidence to suspect them of wrongdoing. Not having an EDL or a new enhanced ID card proposed by Ontario could automatically make you a target for extra searches or questioning. "If you're in the slow lane, you must be trying to hide something," or so some border agents might think.

There is also new room for abuse, in that regular driver's licences will now include a person's nationality in a security environment that treats certain foreign nationals as automatically suspicious. Studies have proven that some police forces in Canada practise racial profiling. Displaying nationality on a card that should only explain that you have the right to drive and are a permanent resident of the province opens up the possibility of regular police officers acting on hunches that could have no basis in reality and, in a sense, turning them into volunteer border and immigration agents without the corresponding mandate.

Canadians need a say in this proposed EDL. While the United States government, according to the norms of international relations, has every right to restrict who can and cannot enter its territory, Canada and the Ontario government should not be going out of their way to help establish integrated North American systems that threaten our privacy for nominal or no extra security value. Federal privacy commissioner Jennifer Stoddart said this year that EDLs "may be an attempt to encourage us to harmonize with them," meaning the United States, and "we think it's unnecessary. We think it's intrusive, and we think it's a route that Canadians don't need to follow."

The Council of Canadians agrees with Ms. Stoddart. At the very least, Canada needs a chance to debate this new technology broadly before any province, including Ontario, can implement it at the border. We have the chance to put the brakes on this process of security integration or harmonization, which is said to ease the flow of goods and people across borders, but at potentially enormous costs to the privacy and real security of Canadians.

That's the end of my presentation. I'd also like to mention that I'm one of several presenters today who do

in fact completely oppose the EDL, the enhanced driver's licence, as it has been proposed, and you're going to hear from more of them later. Thank you.

**The Acting Chair (Mr. Jim Brownell):** Thank you for your deputation. We have about three minutes, one minute for each. Mr. Bisson?

**Mr. Gilles Bisson:** You've answered my first question. You're saying I should vote opposed to this legislation. But I want to get to the second question. You talked about the photo technology as open and prone to problems. Either they were not able to make a match, which may slow down the process of the person crossing the border, or quite frankly identify the person wrongly. Any evidence to that effect that you can provide us with?

**Mr. Stuart Trew:** I'd like to defer that question, if you don't mind, to a speaker coming up, Andrew Clement, who has more information on this side of things than I do.

**Mr. Gilles Bisson:** Okay. Thank you.

**The Acting Chair (Mr. Jim Brownell):** Mr. Brown?

**Mr. Michael A. Brown:** Thank you. I appreciate you coming today. I guess what you're suggesting, then, is that Canadians use passports at the American border and Americans use passports at the Canadian border. One of the huge problems we have here is that Americans will be able to come into Canada without a passport, because we don't require it; however, they would not be able to get back into their own country without the passport, which many of us would think is a huge impediment to trade and to commerce and to tourism. I look across at my friend Mr. Bailey from Sarnia, where I was originally from, and we know the importance of the border there.

So if that's the case, that we would be discouraging our American visitors from coming and doing business in Canada, spending their money at our many attractions, doing those kinds of things, and knowing that the American public—

**The Acting Chair (Mr. Jim Brownell):** It's one minute for a question and answer.

**Mr. Michael A. Brown:** —doesn't have the—thanks, Mr. Chair—propensity to get passports the way Canadians do, what would you say to those people who have those concerns?

**The Acting Chair (Mr. Jim Brownell):** You'll have to be very quick.

**Mr. Stuart Trew:** Sure. First of all, there is a lot of opposition in the United States to these EDLs as well. And also, it really is the personal responsibility of those Americans coming up to Canada knowing that the law is to get a passport, I would say.

**The Acting Chair (Mr. Jim Brownell):** Mr. Bailey?

**Mr. Robert Bailey:** I'd like to second the comments of my colleague Mr. Brown. Yes, trade is important to Sarnia-Lambton. What do you say to those merchants in my riding, and I'm sure a number of other border city ridings, who are concerned with trade? I've been told by them that they're in favour of this, with the caveat that they want to know there is security. It's all right to be opposed to something like this, but what do we do in return for the economy, to improve the economy?



**The Acting Chair (Mr. Jim Brownell):** Ten seconds.

**Mr. Stuart Trew:** Again, I think I'd say that really the argument is the same on both sides of the border. The passport, it sounds—hearing from the privacy commissioner, it's going to be just as hard or possibly harder to get one of these enhanced driver's licences as it is a passport and they cost virtually the same amount of money. The argument for getting a passport is the same on both sides of the border. We don't need a new technology—

**The Acting Chair (Mr. Jim Brownell):** Thank you. We do have to cut it at that. Thank you for your deputation.

#### ANDREW CLEMENT

**The Acting Chair (Mr. Jim Brownell):** We'll move on, and next we have Andrew Clement. If, when you come to sit, you could state your name for Hansard, I would appreciate that. You'll have 15 minutes for your deputation. If there's any time remaining in that 15 minutes, we'll share the time.

**Dr. Andrew Clement:** Thank you. I'm Andrew Clement, and I'm a professor in the faculty of information at the University of Toronto, where I coordinate the information policy research program, and I'm the co-founder of the identity, privacy and security initiative there.

I very much appreciate this opportunity to appear before you concerning a topic that raises some thorny technology and policy issues. I'm speaking as an individual citizen and researcher in the area of privacy and security, and not on behalf of any group or organization.

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Identity documentation is playing an increasingly important role in everyday life. When there's a proposal to change a key identity document—and the driver's licence is the one that is used most often by people—it demands very careful scrutiny and wide consultation before changes are implemented, because it can affect many people's lives.

On first appearance, the Photo Card Act may appear straightforward, even innocuous. Improving the screening process to reduce fraudulent acquisition, offering a cheaper, more convenient alternative to a passport for entering the US and enabling those without driver's licences to obtain official ID are all worthy and well-supported goals. Anything I say here is not intended to detract from those points.

However, looking more closely at the specific changes proposed to the driver's licence, especially in light of the growing push to develop national ID schemes around the world and their linkages with the expansion of surveillance practices, reveals serious flaws that urgently need to be corrected before the Ontario government proceeds with its implementation.

I'll consider just two especially troublesome ID changes proposed by the act: using biometric screening and incorporating an RFID chip in the enhanced driver's licence.

First, biometric screening: Photo comparison technology, as mentioned in the act, but much better and more accurately known as facial recognition technology, is a form of biometrics widely regarded as raising serious privacy concerns. Given the state of the art and the large size of the proposed database—8.5 million registrants—there are likely to be many false matches produced automatically, which will considerably add to the cost of further screening and, more seriously, will identify as suspect significant numbers of people who will be at the very least disadvantaged and may be harmed quite seriously if they get mistaken for someone else.

Furthermore, with this population-wide database, there will be a very strong temptation to use it routinely for other kinds of identification and surveillance. A clear assessment of the risks of this function creep and how to resist it needs to be done at this first stage, rather than after the capability has been established and there are fewer opportunities for public scrutiny.

Ontario's Information and Privacy Commissioner drew attention to some of these privacy risks in connection with Ontario's previous attempt to develop a biometric identity scheme when she wrote to then-Minister Tsubouchi about the Ontario smart card project. She drew attention to the need for strict conditions under which the use of biometrics should be considered and, at the minimum, it needed to meet the requirements of the Ontario Works Act, 1997.

I'll turn now to the RFID on the enhanced driver's licence. I wasn't here for the privacy commissioner's report—I was in class—but I understand that it's come up, and also the previous speaker spoke to it. So I'll trim some of my remarks.

Certainly, one of the most serious problems with EDLs is the requirement to adopt a particularly insecure form of RFID. Over stiff opposition from the smart card industry as well as other civil liberties organizations in the US, the Department of Homeland Security has insisted on a type of RFID chip that is notoriously privacy-invasive in its potential. This standard, known as the passive UHF EPC Gen 2 tag, is already widely used in the supply chain and livestock management fields. The chip on the card would hold a unique personal identification number that anybody within a range of at least 30 feet, or 10 metres, could read with commercially available equipment that you can buy relatively easily. Then, once you can do that, you can link that to other information such as a photograph that you've taken.

The privacy commissioners of Canada collectively drew attention to this immediately after BC announced it was going to develop an enhanced driver's licence, and they pointed to the problems with surreptitious location tracking and the need to protect that personal information. They called on the government to do something about that, but as far as we can see nothing has been done beyond reiterating what I think is a false and misleading claim: that the number on the EDL chip is random and meaningless and contains no personal information, and that the protective sleeve that would be issued or



available with that will prevent unauthorized reading. The protective sleeve that some jurisdictions are making available to cardholders to prevent identity theft puts the onus squarely on individuals themselves. It will also provide no protection when removed from the sleeve at just those times when it is used, such as to show your card for various purposes, making it relatively easy to capture the number and associate it with other information about that individual.

It's therefore ironic that while some jurisdictions require the disabling of similar RFIDs in consumer items at the point of purchase, there appears to be no effective way for individuals to do likewise with a card that many of us will carry all the time. There's been no visible progress in developing less invasive features, in Canada anyway, such as a switch that the privacy commissioner referred to earlier.

That the Department of Homeland Security and apparently our own government are adamant about deploying these vicinity RFIDs when there are other options available to adopt even the obvious protective measures invites the conclusion that there are wider surveillance purposes intended here.

With earlier attempts at developing national ID schemes in Canada and the US having been thwarted in part by popular opposition, the current push for EDLs appears to be a soft-sell, backdoor approach towards national ID schemes that are harmonized across all of North America. Department of Homeland Security Secretary Michael Chertoff has been clear in his pursuit of a national ID. The Real ID Act is widely seen as a major step in that direction. It has provoked a storm of opposition: 19 states have already declared their refusal to go along with it. The EDL, as mentioned previously, is very similar to Real ID requirements in design and implementation, and the Department of Homeland Security has been working to make them interoperable. Indeed, Secretary Chertoff has noted, in referring to the EDL, that "it's kind of a Real ID with an additional feature ... a chip."

With so much fuss south of the border, it's disturbing that Canadian governments are quietly accepting these controversial ID measures. That there is so little public discussion here about the rationales and risks serves Ontarians poorly. However, once people come to understand what's at stake, I expect we'll hear more and louder voices of concern.

In short, in the name of thrift and convenience, Canadian governments are opening the door to a privacy-threatening ID scheme imposed by the US that Canadians will rightly object to once they learn more about it.

Until these issues have been addressed satisfactorily, Canadians who value privacy, national sovereignty and good governance would be well advised to get a passport instead, and our governments should help them get one.

In summarizing those concerns, I'd like to draw the committee's attention to a so-called four-part test that the federal privacy commission developed several years ago, based on the Oakes constitutional case for assessing

proposed measures. In short, the four-part test states that the burden of proof should be on those who claim that some new intrusion or limitation on privacy is necessary, and that any proposed measure must meet the tests of necessity, effectiveness—that they be necessary, effective, proportionate—and intrusiveness.

In both the cases of the use of facial recognition technologies and the RFID chip on cards, I'd say that they fail to meet the test. From public information, certainly the biometric one has not done that yet; maybe it will. In the case of the RFID chip, unless there's a dramatic change in technology and policy from the United States, I can't see how it would possibly meet the four-part test.

To conclude, I would urge the committee to treat the three main changes to the ID that are reflected in the Photo Card Act separately. In particular, I'd suggest that the committee use the four-part test based on Oakes to assess the RFID and biometric capability. Unless high standards of privacy protection for the proposed photo cards can be met, this legislation should not proceed.

Furthermore, I think the Ontario government should facilitate Ontarians acquiring Canadian passports to travel to the US by reducing their cost and speeding their issuing.

The biometric aspects of the photo card should at least meet the minimum requirements of the Ontario Works Act, 1997.

Further, no more personal information should be provided to US authorities about Canadians crossing the border with an enhanced ID document, if one is passed, than is provided when using a passport. There should be full public disclosure and transparency of all the key aspects of the photo card development, issuing and operation, especially its financial costs, which may be significant, and the privacy risks, which are clearly evident.

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The Ontario government should clearly explain how it would substantively prevent the function creep that can easily accompany the introduction of biometric screening and enhanced ID documents.

And finally, before pursuing further ID initiatives which will inevitably come along, the Ontario government should engage Ontarians in an informed public discussion of the financial, privacy, identity and security risks, protections and alternatives.

Thank you very much.

**The Vice-Chair (Mr. David Oraziotti):** Thank you very much for your presentation. We have about a minute for each caucus, so if we can do that quickly we can get through it. Go ahead, Mr. Mauro.

**Mr. Bill Mauro:** Professor, thank you for being here today. I believe you said something about how people are being misled in that the embedded chip on the card has the potential to release more personal information than we're being told. Can you elaborate on that?

**Dr. Andrew Clement:** Yes. I made that in reference to both the number on the chip and also in relation to the protective sleeve. In terms of the number on the card,



they've said that this is a meaningless number and that there's no way you can associate that with the person. But it's in some ways no more meaningless than your credit card number or the IP address on your computer because under situations of use—when you present it or when there's a photograph that can be taken while that card number is being read—it can be relatively easily associated with you. By standard definitions that are adopted by privacy commissions, that would be treated as personal information because it is permanent and it is unique; there's no other number that's the same and it's associated with your person.

**Mr. Bill Mauro:** But in practical terms, how would somebody, if they had my number somehow, know that it was associated with me, unless they were able to get into the database that it links to?

**Dr. Andrew Clement:** If you take your card out, let's say, when you're buying something or you have to show it, like at the post office or something, then they can read the number off your card and they can take a photograph of you.

**Mr. Bill Mauro:** They can read the number off my card?

**Dr. Andrew Clement:** The reading of the number on the card can be done at a range of 30 feet. So if I had the equipment, I could bring it into this room and read the card numbers of all of the cards of everybody in this room that were not protected.

**Mr. Bill Mauro:** Thank you.

**Dr. Andrew Clement:** That's been designed as a feature of this so that they can put the readers across the roadways, so they can read it under rather difficult circumstances.

**The Vice-Chair (Mr. David Orazietti):** Thank you. Mr. Klees.

**Mr. Frank Klees:** Thank you, Professor Clement, for your presentation. The privacy commissioner in her presentation referred to a technology that could actually switch these cards off. You're familiar with that technology?

**Dr. Andrew Clement:** Yes. I have recommended that as a possibility.

**Mr. Frank Klees:** She suggested and was pretty excited about the fact that that technology is real and could in fact be implemented into the Ontario project. Given that, is your concern regarding the EDL chips then addressed, or do you still have concerns?

**Dr. Andrew Clement:** There are quite a number of problems with the EDL chip, but the on/off switch would help greatly. I guess I differ with the commissioner when she says that you should go ahead with the existing implementation and then bring in the more advanced one later. I would suggest that we not implement the current version because it is dangerous for the reasons we've elaborated, and that when other forms of identification are needed—where the case has been made for the need for good identification—then an on/off switch would be very helpful. So I would see that as a good move, but I don't see that it's appropriate in our circumstances yet.

**Mr. Frank Klees:** Thank you.

**The Vice-Chair (Mr. David Orazietti):** Thank you very much for your presentation.

## GS1 CANADA

**The Vice-Chair (Mr. David Orazietti):** Next we have GS1 Canada. Eileen Mac Donald and Kevin Dean are here. Welcome. You have 15 minutes for your presentation. Any time that you do not use during your presentation will be divided among the caucuses for questions. Proceed when you're ready. Please state your name for the purposes of Hansard.

**Ms. Eileen Mac Donald:** My name is Eileen Mac Donald.

**Mr. Kevin Dean:** Kevin Dean.

**Ms. Eileen Mac Donald:** Thank you for the opportunity to present to you today with respect to the public hearing on Bill 85. Kevin Dean will be here to answer any technical questions with respect to what I'm about to communicate to you.

What I want to do, first of all, is give you a brief overview of GS1 Canada and why it's important that we're here today. GS1 Canada stands for global standards, and we are a member organization of GS1 globally. There are over 145 countries that are GS1 countries; I think that's very important to note. Our first and foremost mandate is to represent Canada in the development of global standards. So we will sit at the global table when a standard is being developed and we will identify the Canadian requirements, and we ensure that they are baked into the standard, such as building codes, metric, bilingualism, etc.

As the Canadian member of the global GS1 organization, our role is not only to ensure from a standards perspective, but the governance model is to ensure that companies of all scales are able to partake in the standard that's being developed. We are known for building communities of interest around a standard, such as the electronic product code which is currently embedded into the EDL, which is very important and why we're here today. We would have represented Canada in the development of that standard over the last five years; I think that's important to note. We have 25,000 members and 80% of those members are small companies.

I think it's very important, before I continue, that it's understood that we are not a solution provider. We do not engage from a technological perspective. Our first and foremost mandate is standards. Secondly, what we do is education, and we also offer implementation services from time to time to help a specific industry upon their request.

Our role is to represent Canada in the development of standards. I think it's very important to make sure that that's understood. I'm repeating myself.

I think it's important to understand that EPCglobal Canada is an affiliate of GS1 Canada. We purchased the MID technology. What you would know us mostly for would be the bar code. We implemented the bar code in



Canada, and from a global perspective there are over five billion transactions on a daily basis of this particular standard. GS1 Canada manages the mandate wholly, which is the subsidiary of EPCglobal Canada. We believe that the electronic product code is moving forward in being the next generation of the bar code, with the usage of radio frequency identification.

GS1 Canada first became involved in the provincial EDL initiative in 2007, in the early stage of governments planning with respect to processes. As you know, in response to the US western hemisphere travel initiative, the governments of the United States and Canada agreed to accept an optional enhanced driver's licence as an alternative to passports going over the border.

The US Department of Homeland Security has determined that the EDL will be the vicinity RFID-enabled card. You would know from a technological perspective, as it relates to RFID technology, it's been around for a long time. In many cases, your pass card would be RFID technology. That would not necessarily be a global standard. The EPC chip or the RFID code built into the driver's licence would be based on a global standard for the purposes of interoperability.

Homeland Security selected the vicinity RFID for the EDLs as a means of speeding travel time across the border. In 2007, Homeland Security and the Canada Border Services Agency selected GS1 standard, which would be the EPC code, for the RFID technology and the document identification for integration into the enhanced driver's licence, as they enable the requirement for vicinity RFID while safeguarding sensitive personal information. GS1 standards do not include any personal identification information. This is a very important component. So right now, if I go over the border—and I travel a great deal—I give you my passport as I go through from a flight perspective and they're scanning it, there's a lot more information there than there is with respect to the driver's licence. I think that's important to note. Similar to the licence plate, when I go through the border and I'm driving over they're tracking the licence plate right now, which would then ultimately tie back to the individual owning the car.

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Similar to the licence plate, this unique document identification number is transmitted to a government computer system and is used as a pointer to the location in the secure database where this information is stored. The importance of the use of the global standards in Canada in the Canadian and American enhanced driver's licence initiative cannot be understated. It's very important not to use proprietary systems. That's where you run into a lot of the concerns which are warranted. Privacy and security requirements are built into the design of the GS1 standards. So when I speak to you about the communities' interest, our role is to bring all of the appropriate players to the table to identify the requirements, from beginning to end, for the purposes of implementation. So to have an understanding of the importance of privacy, and within what we're working on

within Canada, we've engaged with four privacy commissioners with respect to this initiative.

Standards are the foundation for clear, consistent and understandable exchanges between parties. In the case of the enhanced driver's licence, this means that each province captures and encodes the driver's licence information in the same way, ensuring the same technology requirements at every border crossing across the country for reading and interpreting information. More broadly, GS1 standards can also facilitate faster cross-border identification of products in areas such as customs programs, product traceability, anti-counterfeit, logistics efficiency and regulatory compliance.

We are also engaged right now. GS1, from a global perspective, has a memorandum of understanding with the World Customs Organization and CBSA to advance these specific types of initiatives. Thus, as the government of Ontario advances Bill 85, the integration of the GS1 standards into the EDLs will also support other governments' measures for ensuring efficiency, effective flow of goods, people and information across jurisdictions.

Here are our recommendations, based on our experience with BC and with Washington:

- that the government legislate against deliberate scanning of the card for unapproved purposes;

- that the enhanced driver's licence be issued with a protective sleeve—and, yes, the commissioner was correct that there is a capability of an on/off switch;

- that the EDL be locked, using built-in security features to prevent re-writing of the card, such as denial-of-service attack;

- that the EDL's serial number be random and that this serial number be changed whenever the EDL is renewed;

- that the government provide a comprehensive public education site, similar to that provided by Washington state; and finally

- that the government work with GS1 Canada to help ensure the application of the standard-based processes and best practices for security and privacy and to help enable standard-based interoperability between Canada and the US.

When we talk about the applications and the standards, you will see through the pilots that any of the issues were when you went outside of the standards. So the users and the technology all need to be certified with respect to ensuring they're respecting the standards.

I thank you.

**The Vice-Chair (Mr. David Oraziotti):** Thank you very much for your presentation.

We have just about a minute for each caucus as well. So if Mr. Klees would like to start, if he has any questions. I'll start with you this round; thank you.

**Mr. Frank Klees:** You're obviously familiar, then, with the various companies and their technologies worldwide that deal in this technology. You heard the commissioner's comments about the on/off switch technology



and so on. Could you just comment on the reliability of that technology? What experience do you have with it?

**Mr. Kevin Dean:** The on/off switch?

**Mr. Frank Klees:** Yes.

**Mr. Kevin Dean:** It's like the on/off switch for the microphone. The microphone has the capability of recording everything I say, but there's somebody who is controlling the switch. The RFID chip is a circuit just like any other and if the switch is not turned on, the circuit won't activate no matter what you do with it.

**Mr. Frank Klees:** And that technology is now commercialized, is it?

**Mr. Kevin Dean:** Yes. It's a trivial addition to an RFID chip.

**Mr. Frank Klees:** Where is it being used?

**Mr. Kevin Dean:** The company that the privacy commissioner mentioned is not one that I'm familiar with, but we do know that IBM, for example, has removable and replaceable tear-off strips on their tags to protect the RFID information for similar purposes in shopping applications.

**The Vice-Chair (Mr. David Orazietti):** Mr. Bisson?

**Mr. Gilles Bisson:** Just a question. You make a recommendation to make the serial number on the EDL completely random. Explain that. If you make it completely random, how do they read it? I'm not quite sure of the technology.

**Mr. Kevin Dean:** It's not random every time you read it. You still read back the same number, but rather than assign serial number 1 to me, 2, 3, 4, 5, 6 and get a sequential, easily guessed sequence of numbers, you assign 1, 2, 3, 4 to me, 7, 8, 3, 1 to you, and so on down the line. None of these numbers are in any way related to each other. There's no known sequence to them, so it's not possible to create an EDL chip with a number that might be valid.

**Mr. Gilles Bisson:** Is there any technology to stop the deliberate scanning of cards? You're saying legislate it, but if you legislate it, somebody will break the law. Is there a way of denying that type of access?

**Mr. Kevin Dean:** No more than there is to prevent somebody from taking a photograph of my licence plate and recording my location at the Legislature building today.

**The Vice-Chair (Mr. David Orazietti):** Mr. Brown?

**Mr. Michael A. Brown:** I, too, am intrigued by the on/off switch and the commercialization of that technology. I think we would all agree that is a good thing to be doing, if we possibly could do it in the time frame we have allotted. I would just ask that you help us out and provide us with the kind of information that the government would like and the opposition parties would like so that we might have a look at how that might be implemented.

**Mr. Kevin Dean:** We would certainly be happy to do so. We work with a number of companies in their implementations of RFID in a variety of ways.

**Mr. Michael A. Brown:** Thank you. We appreciate your expertise.

**Mr. Frank Klees:** Chair, if I might then, with regard to the undertaking, could we ensure that information is distributed to members of the committee when received, and could someone follow up with them on that?

**The Vice-Chair (Mr. David Orazietti):** We'll ensure that the information gets to the clerk and that it's sent to all members of the committee.

Thank you. That concludes the time for your presentation. Thank you for being here today.

## CANADIAN CIVIL LIBERTIES ASSOCIATION

**The Vice-Chair (Mr. David Orazietti):** Our next presenter is the Canadian Civil Liberties Association, if I could call on Graeme Norton to come forward, please. Thank you very much for being here today, Mr. Norton. Please state your name for the purposes of Hansard before you begin and then you have 15 minutes for your presentation. Any time that you do not use will be divided up for the caucuses to ask questions of you. So go ahead whenever you're ready.

**Mr. Graeme Norton:** Certainly. Thank you. My name is Graeme Norton and I'm here with the Canadian Civil Liberties Association. I'd like to thank the committee for giving us the opportunity to appear before you today on this important piece of legislation.

Like many of the others, we don't take issue with the objectives of this legislation. Obviously promoting tourism and trade, and finding ways for that to happen more easily, is a desirable objective and relatively benign. What we take issue with is the means that have been used to achieve those objectives. We think that those means have the potential to threaten privacy and civil liberties in substantial and significant ways and we think the challenge before the committee in dealing with this legislation is to find a way to achieve the desirable objectives of the legislation without unnecessarily intruding upon civil liberties and privacy rights.

I have the fortunate position of going at the end of some of the presenters, so I will not walk you through some of the specifics of the technologies in the way that some of the parties that have gone before me have been kind enough to do. So I will try to proceed with our recommendations, discussing briefly the technologies to the extent necessary as we go.

Like many of the other presenters here today, the Canadian Civil Liberties Association is very concerned about the privacy and civil liberties threats posed by Bill 85. In our view, it is inappropriate to introduce photo comparison technology and RFID-equipped EDLs into Ontario's driver's licence regime. These technological powers are not proportional to their objectives and have the potential to significantly threaten privacy and civil liberties. The potential for function creep with these technologies is very real and we don't feel that this is a fact that Bill 85 sufficiently addresses. In our written submission, we set out a series of recommendations with



respect to the bill that we urge you to consider in your deliberations about this legislation.

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On the issue of photo-comparison technology, the CCLA is concerned that the bill does not sufficiently circumscribe how the technology can be used. As noted, photo-comparison technology can and has been used for a wide range of identification purposes. In the United States, for example—and I'm not sure if anyone's mentioned this today—it has been used for surveillance purposes. At the Super Bowl in 2001, for example, all attendees were photographed, and their photographs were scanned against a database of known criminals that existed previously. It has also been used in programs where cameras have been set up to photograph people's faces as they walk down the street, and to take those photographs and use them against an existing database of photographs.

So this is a technology that has a range of potentially privacy-invasive applications. It doesn't appear that the bill is intending to employ it in this type of way, but its introduction alone is concerning to us if how it can be used is not closely circumscribed.

Furthermore, we're not convinced of the necessity of using this technology. It doesn't appear that licence fraud is a sufficiently significant problem to warrant the introduction of a technology as potentially invasive as photo-comparison technology. Moreover, it's not clear, based on its ability to actively predict whether or not an individual matches up with a picture, that it will be effective in accomplishing the objective of fraud protection for which it is implemented.

To us it's also significant that the US government does not require that this be part of an EDL. This is something that Ontario has taken on, so it's not like some of the other things, such as RFID, that are required if we want to participate in an existing program of another government. Therefore, the CCLA believes that including photo-comparison technology in the bill is not appropriate and that the provisions that enable it should be excised. In the alternative, if that's not done, at the very least we think that more substantial safeguards must be put in place in the bill in terms of how photo-comparison technology can be used. The biometric information and its underlying root images should be closely guarded and only used for highly specific purposes.

With respect to the actual text of the bill, we note that paragraph 11(4)7 allows for the disclosure of information, which appears to include information that would be used to generate photo-comparison technology imagery and the underlying biometric data to any Canadian, federal, or provincial government for a variety of purposes. One such purpose is the prevention of improper uses of photo cards. From our perspective, that's a very broad purpose, and to permit the disclosure of this type of information to any Canadian government for that broad a purpose creates the potential for a lot of unwarranted information sharing and could lead to inappropriate use of this type of data.

The CCLA is of the opinion that the sensitive nature of the biometric information that could be collected under the bill requires clearer safeguards. To this end, we would recommend several things.

We would recommend that the bill should specifically foreclose the possibility that biometric-capable data could be used for anything other than preventing people from fraudulently obtaining Ontario driver's licence and photo cards. Furthermore, as only Ontario could have a valid interest in using photo-comparison technology biometrics for this purpose, the bill should specifically prohibit transferring such data and information to other Canadian or foreign governments.

Continuing on the technological front, the CCLA, as I'm sure you won't be surprised to hear, is also deeply concerned about the use of RFID. When considering implementation of this technology, it is important to remember that EDLs and driver's licences, unlike passports, are documents that people carry with them at all times. If the type of RFID proposed is included on the licence, then licence holders, like warehouse stock, will be detectable from up to 10 metres, or more, away. That's a significant intrusion into their privacy, from our point of view. If I knew all of your underlying numbers, I could detect that you were sitting there right now if I had the correct technology to do that.

In CCLA's view, dealing with this problem by giving EDL holders a protective sleeve in which to store their licence is simply insufficient to protect against the potential privacy threats posed by the technology. We envision that such sleeves are likely to be damaged, lost, or to simply go unused, resulting in information on RFID chips being available frequently and, for some people, at all times.

Moreover, the CCLA believes that other, less intrusive means could be used to provide border officials with advance notice of who's approaching their station. One possibility that has been proposed in other jurisdictions is, instead of broadcasting the data to the border station, having a short-range reader 30 metres or 10 metres ahead—whatever the distance—where somebody could just swipe their card as they approach, thereby accomplishing the same thing, giving the border station early notice of who's approaching without having to require insecure broadcasting of that data over the airwaves.

We don't see that RFID is necessary here, and we think that it should not be included. I understand that there's the reality that the US is requiring it, so that's the difficult thing to deal with here. RFID, and a specific type of RFID, has been proposed. We would prefer that the type that has been proposed not be used. There are much more secure types. There are shorter-range chips that will not broadcast as far and can encrypt data, and we would encourage further negotiations with the Department of Homeland Security to see if they would be willing to perhaps consider a more secure chip. In the alternative, if they would push forward, we would agree that Commissioner Cavoukian and others have made good suggestions about the on/off switch potential of



other chips, which can be used to meet the US requirements. We would push for a change to the type of technology that is likely going to be used there.

We would also suggest that the bill clarify that RFID can only be accessed by border officials for the specific purpose of identifying travellers and that it should be an offence for any other person to access that information for any other reason. This has been done in other jurisdictions in the US. I'm not sure how effective that legislation has been, but having it on the books would at least provide an additional safeguard.

Finally, we would agree with previous presenters that the unique identifier contained on an EDL should not be linked to that individual forever; it should be changed at periodic intervals. For example, when you go and get a new driver's licence, you should, at a minimum, get a new unique identifier, so that somebody who may have come into contact with it would at least have to get it again.

On the issue of participant data, we have further concerns with respect to the type of information that may be transferred to American authorities under the bill. Our research indicates that US border agencies have broad powers to retain and disclose information on travellers to the US. They can hold this data for up to 75 years, apparently, and can disclose it broadly to government agencies for a wide variety of purposes. For those with EDLs, such information would appear to include a driving record, if we follow the examples set by other provinces. You could tell when somebody's licence had been suspended, and this would be information included and passed along to US authorities. We don't see any need for this. For example, we don't understand why American authorities would have to know why a passenger in a car or boat had once, in the past, had their driver's licence suspended. We simply don't think that's relevant. Going to that point, we would recommend that any information not required to determine admissibility to the US should not be passed along to American authorities under an EDL program.

Finally, given the potential for abuse of EDLs and their ongoing accompanying technologies, the CCLA believes that the introduction and ongoing use of EDLs should be subject to broad-reaching independent scrutiny. Such scrutiny should be focused on identifying potential civil liberties concerns resulting from the use of EDLs and making recommendations about how such problems can be remedied.

An independent audit body should be given the authority to scrutinize, with full access to records, facilities and personnel, the implementation and ongoing use of EDLs. Regular public reports should be submitted to the government regarding any problems—and not just to the government but to the Legislature, publicly, to clarify that point—relating to EDLs and recommending how such problems can be corrected. While the recommendations would not be binding on government, they would place pressure through the publicity that would be generated by them for the government to ensure that

EDLs negatively affected civil liberties and privacy rights as little as possible.

In conclusion, the CCLA urges the committee to consider our recommendations and not to pass the bill until amendments have been made that will sufficiently curtail the significant threats to civil liberties that it could cause.

Thank you again for the opportunity to appear before you today. If you have any questions, I would be pleased to answer them now.

**The Vice-Chair (Mr. David Oraziotti):** Thank you very much for your presentation. We'll start with Mr. Bisson. You have about a minute or so—a minute and a half.

**Mr. Gilles Bisson:** One of your recommendations is that you remove the photo-comparison technology from the bill. What would you do in its place? How would they be able to identify who the person is?

**Mr. Graeme Norton:** With respect to fraud protection?

**Mr. Gilles Bisson:** Yes. Well, not only fraud protection, but from the perspective of crossing the border.

**Mr. Graeme Norton:** From the perspective of crossing the border? I'm pretty sure that they could use whatever means are currently in place for doing that. It's not required by the US that that be part of the EDL, so I don't think that they require it as part of their access strategy. That is strictly, from my understanding, something that Ontario has decided to include in the program.

**Mr. Gilles Bisson:** You also said that the end-use requirement on the part of the Department of Homeland Security is that we meet a certain standard. You talked about the technology being used. Do we go to a passive system or an on/off system? If the Americans should say that they don't accept the on/off system, what would you do if you were Ontario?

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**Mr. Graeme Norton:** That would put you in the difficult position of either having to decide to abandon the legislation, effectively, or to accept the potentially threatening standard imposed by the US.

**Mr. Gilles Bisson:** Your recommendation?

**Mr. Graeme Norton:** My recommendation would be to not go forward with the bill in its current form with that standard.

**The Vice-Chair (Mr. David Oraziotti):** Mr. Brown?

**Mr. Michael A. Brown:** I appreciate some of the issues that you brought forward. I think some of them we've heard for the first time, at least in this forum. My first question is, do you have any idea, where there is this on/off technology for the chip, how often people would use it versus putting it in a sleeve? I'm not very convinced that there is that much difference in terms of usage. Is there information about that available?

**Mr. Graeme Norton:** Yeah, I can't claim to have in-depth knowledge about that technology. I'll just make a guess at how it might work. From my experience, I was given a sleeve when I got my last bank card, and I



haven't seen it in about seven years. So that informs my opinion on the sleeve issue.

I've never had a card with an on/off switch on it. I might be more diligent with that, but I definitely see that two safeguards are better than one safeguard, as one safeguard is better than no safeguards. I'm sure that some people might still leave it on and that it wouldn't solve all problems, but it would be a step in the right direction for sure.

**Mr. Michael A. Brown:** To the issue of information that might be shared, it's the intention for the card not to share any more information than a passport would provide you with. Do you have any problem with the information a passport provides?

**Mr. Graeme Norton:** No, not per se. That concern arises from some of the information that is passed along in other jurisdictions. My understanding is that the program in BC enables further transfer of data that goes above and beyond what is currently passed along with a passport.

**Mr. Michael A. Brown:** I believe BC's is a relatively small pilot project—I can't remember the number, but it's relatively small—and hopefully the lessons that are learned there can be shared across the country.

**The Vice-Chair (Mr. David Oraziotti):** Mr. Klees?

**Mr. Frank Klees:** Thank you for your presentation. We heard from the privacy commissioner the extent of the information that would potentially be required and it does go, in fact, far beyond what is required for passport information. Why would someone be asked to provide so much more personal information than even a passport? What could possibly be the reason, in your opinion?

**Mr. Graeme Norton:** Again, I'm in a position where I can make no more than a wild guess at that question.

**Mr. Frank Klees:** Go ahead.

**Mr. Graeme Norton:** I don't see any particular rationale for doing that. If, under a passport program, only a certain amount of information is required to enable you to get into pretty much every country in the world, I don't see why more information would be required as underlying information in an EDL program to get you into a country that, previously, was happy to allow people in with just a driver's licence. Again, I would agree with the privacy commissioner on that point that as little data acquired through this program as necessary would be desirable.

**Mr. Frank Klees:** You were very strongly opposed to photo-comparison technology. When the minister presented that, it seemed harmless, quite frankly, but you're strongly opposed to it. I'd like you to just tell us why you have such a strong opposition to photo comparison.

**Mr. Graeme Norton:** The way it's proposed for the detection of fraud protection or prevention of fraud with driver's licences—I really question whether or not it would be effective in achieving that, based on my understanding of its likelihood of being able to identify photographs matching up with an individual. We don't see it as necessarily required to promote that objective. If

it is to be brought in, it may bring certain benefits along with it.

Our biggest concern is that it only be used for that very specific purpose if it is used. It has, as I mentioned, been used in other jurisdictions for other purposes and we would be very much opposed to that, so if it is brought in for that specific purpose, the bill should be very clear about that and foreclose the possibility that it could be used for anything other than fraud detection.

**The Vice-Chair (Mr. David Oraziotti):** Thank you, Mr. Norton, for your presentation.

STEVE MANN

**The Vice-Chair (Mr. David Oraziotti):** Our next presenter is Mr. Steve Mann—if you'd like to come forward, please. Welcome, Mr. Mann. You have 15 minutes for your presentation. Any time that you do not use will be divided among the parties for questions. If you'd like to state your name for Hansard and proceed when you're ready.

**Dr. Steve Mann:** My name is Steve Mann. Thank you for giving me the opportunity to speak here today. I'm a professor at the University of Toronto. My technology and designs—I work on electric seeing aids, computational seeing aids, devices to assist the visually impaired and visual memory aids and things like that. I build electric eyeglasses and that kind of technology, so I come to the privacy issue from a different perspective; for example, if somebody is remotely sending video and allowing somebody else to help them see better, or visual memory prosthetic and mind files and that sort of thing.

So I enter into the privacy arena from a different kind of technology—what we call “sousveillance,” le contraire to surveillance. “Surveillance” in French means to watch from above. “Sur” means above, and “veiller” means to watch. “Sousveillance” means to watch from below, so sousveillance pertains to technology on people and surveillance is technology on architecture and buildings, in some sense. We work on these technologies, and we've got a community of about 30,000 cyborgs now who engage in their day-to-day lives, living online and that sort of thing.

I approach this technology from the point of view of privacy, but also one of the things that I've encountered living this life—and with the growing population of the elderly, there's going to be more and more people using electric eyeglasses and seeing aids and that sort of thing. One of the problems is that we often get harassed by security guards. Security guards are afraid of any sort of accountability sometimes, so we experience the world a little bit—see some different things that might not have been seen before.

I researched the history of terrorism, because terrorism is often the reason for a lot of these surveillance initiatives. When I did an initial study on terrorism, I found the first occurrence of the term “terrorism” was used to describe the reign of terror in the French Revolution. The word “terrorism” was first used—its original definition



was an act that a government perpetrated against its own people in order to terrorize them into submission. If you do a historical look at terror, it comes from French, much like surveillance and sousveillance are also French terminology—there's a French history. The world's first terrorist organization was the committee on public safety, COPS. It's interesting COPS was this committee on public safety. It was a government organization that was the world's first terrorist organization. So I see the world from this reversed perspective, and I can't help but question what the checks and balances are.

One of the things that this technology does, in a sense—Andrew Clement made reference to RFID being used on livestock—is make us like electronically tagged animals at feedlots. I asked myself a very simple philosophical question: What is the difference between wildlife and livestock? Wildlife crosses the border without asking permission, without showing ID, without carrying identification, whereas livestock carries identification. Wildlife is free; livestock is owned by somebody else. The question that comes into my mind is, who owns me? Do I own myself—i.e., am I wildlife? Or am I owned by somebody else, a large corporation that's making a lot of money by tracking my movements—i.e., livestock?

My concern is really not so much about hackers getting into the system, but more about the potential conflict of interest and the “enemy within” aspect of it. What will prevent it from being used to terrorize people—terrorism in the traditional sense, what it used to mean or originally meant? What prevents that form of terrorism? What sort of liability is there when individuals are targeted and harassed internally for their beliefs or their actions, or just because they're a little bit different? Even just somebody who's differently abled often becomes the victim of harassment and terrorism. I've heard just all too many situations of a deaf child being shot by police because he didn't respond to orders or a visually impaired person being attacked because he didn't see the policeman command him to do a particular thing.

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What are the checks and balances for all of this huge amount of surveillance? I kind of like to use the ladder analogy with surveillance. If we put cameras in the east end, it will push crime to the west, but if we put cameras in both the east end and the west end, it will push crime up the ladder of life, and those on the bottom-most rung may no longer perpetrate crime, but it will become more profitable to perpetrate corruption. In other words, the crime moves up. Surveillance tends to, by its nature, push crime upwards when it becomes pervasive. It doesn't push it east or west; it pushes it up the ladder, and the very surveillance system that was put in to protect us can be abused with its potential inherent conflict of interest. I think of a ladder as having different rungs, and the bottom rung of the ladder looks down; that's surveillance.

There's another word called “oversight.” In English, “oversight” means the same thing as, in French, “sur-

veillance.” “Oversight” is a literal translation of the word “surveillance,” but usually it means further up the ladder. The way we normally use the word is congressional oversight. We look down from above, higher up. So congressional oversight also looks down the ladder as well.

What mechanism is there for sousveillance and what I call “undersight,” the English translation of sousveillance? Surveillance is the bottom rung of the ladder looking down, sousveillance is down at the bottom looking up, and oversight is higher up, also looking down, but undersight is sort of mid-ranks looking up. So what undersight and sousveillance mechanisms are in place for this technology? It seems like that might be something that's missing, hasn't been thought of or hasn't been considered.

There are obvious technical issues, like that Faraday cage: How many decibels of attenuation does it give? There are crazy things, like that on/off switch: Is it waterproof? Some people swim with their wallet. They just carry a few credit cards and some change or something and they don't use a wallet. They just have a little clip that holds it together. A lot of people just don't want to take it out when they go for a swim and have it stolen. So if I were to go for a swim in a saltwater ocean, what would become of that on/off switch?

But more importantly, if you think of that on/off switch on the card, if this was my card here and on the edge of it, it had this on/off switch, why not just put a couple of contacts, have the on/off switch over here and just have a card reader, and you stick it into the card reader and the on/off switch closes? Why have an RFID at all? The best on/off switch is contact closure from the card. You stick the card into some contact closure that turns it on; there's your on/off switch. The on switch is built into the card reader and you insert it. Why not just simply have contacts on the edge of the card like they do already now and that's your on/off switch? Why have the RFID at all, really? Why not just use a contact-based card-reading system, because then you'll have your on/off switch and it will be waterproof and reliable, and it's proven technology? Why advance to this increased surveillance technology?

It's not just the issue of hackers, but it's also the issue of what prevents the corruption that might follow or the abuse of it, especially when it's outside of our country. The US keeps it for 75 years, and maybe they even break the law. A lot of these higher organizations operate above the law; they don't respect the law. Why give our Canadian sovereign ID to a country that may or may not respect the law by organizations that may or may not respect the law, organizations that are above the law? Why open ourselves up to that risk?

**The Vice-Chair (Mr. David Orazietti):** Thank you very much for your comments. We'll start with the Liberals. You have about a minute and a half for your questions. Go ahead, Mr. Brown.

**Mr. Michael A. Brown:** We appreciate you being here, bringing a perspective I don't think we've heard before today, and we appreciate that.



I would bring you to the point that this is also a photo card that could be used as identification for people who aren't drivers. We've been talking here a lot about how it might be used at the border, but this is also just a regular card that can be used anywhere, which does not necessarily need to have any of the technologies or anything attached to it. You can get a photo card in this technology that just allows people to be identified. There are a number of people in our society who don't drive, for example, and therefore would not have a driver's licence, and who would find this useful. Could you comment on that?

**Dr. Steve Mann:** Well, sure. You can use other things, like a passport, a health card or something else. I guess my comment is, whether you drive or don't drive, that's not really the issue. The issue in my mind is whether we become electronically tagged animals at feedlots, whether we become livestock that's tracked. Whether there's a sleeve on there, and its attenuation, of course—the sleeve—gets lost or worn out or whatever, in practice, if you start tracking people like this, it sort of heads down a slippery slope.

**Mr. Michael A. Brown:** I understand that, but many people would choose not to have that. You can choose. This is totally voluntary. If you don't want to have this, you can have a passport. If you want to have just plain identification without any technology attached to it at all, you can.

**Dr. Steve Mann:** Would it be voluntary like taxation? Taxation was voluntary when it first came out. I'm worried about developing the technology, because it might start out being voluntary and then, you know—

**Mr. Michael A. Brown:** I take your point.

**The Vice-Chair (Mr. David Oraziotti):** Mr. Klees.

**Mr. Frank Klees:** Thank you very much for your presentation—most interesting. I've heard words today I've never heard before, and thanks for explaining them. You raised—

**Mr. Gilles Bisson:** It's called French.

*Interjections.*

**Mr. Frank Klees:** Merci, merci.

**Dr. Steve Mann:** Les nouveaux mots.

**Mr. Frank Klees:** You used the term "slippery slope," and I think Mr. Brown believes his government, actually, when they say that this is going to be totally voluntary, and no doubt it will be at the outset. The reason that we're all so concerned about what this actually will look like, I think, is that we all believe at some point it will move beyond the voluntary stage. That's the reason we have to guard it so carefully now, because if we go down this road and we are not vigilant on these privacy issues, then we find ourselves with a lot of information out in places we don't want it to be.

I thank you for raising that concern, and we'll certainly do what we can to hold the government to account and to ensure that these privacy safeguards are in place. So thank you for your presentation today.

I have one other question for you, with your permission. I have never heard the term "electronic eye-glasses." Could you explain that for us?

**Dr. Steve Mann:** Hearing aids now have all gone electric, computerized, and the next-generation eye-glasses download your prescription over the Internet. When your eyes get tired or at the end of the day you get a stronger prescription automatically, or if you're reading, instead of having a little field of view, your entire field of view goes to reading. Also, we have been looking at people who are legally blind but still have some remaining eyesight being able to read, because it renders everything in laser light, so it has a clarification of things. It's something we have invented in our research lab at the University of Toronto.

**Mr. Frank Klees:** Wonderful. Thank you for that explanation.

**The Vice-Chair (Mr. David Oraziotti):** Mr. Bisson.

**Mr. Gilles Bisson:** Maybe we should have had translation so people understood those French words. Just joking.

A really interesting presentation. I think you're at a level on this issue that most of us are not. You're looking at the whole issue of privacy from the perspective of individual rights versus the right of government to survey what we're doing, and I think it's quite interesting.

I'm a little bit puzzled, though. You're saying on the one hand that you are opposed to the RFID; rather, you want to have some sort of swipe technology with a contact system that they swipe and that makes it safe. But on the other hand, you're worried about the information that could be gathered by whomever—in this particular case, the American side of the border—and that that information could be used against you. How do you square those two things off?

**Dr. Steve Mann:** I guess I'm not saying that I have a full solution to it. This isn't really my area, so I don't really understand all of the issues. I'm kind of expressing my overall concerns that we are rushing into a surveillance society and a police state unnecessarily, that in some sense, because the Americans tell us that we need to crack down on terrorism, maybe we should ask them for a second, "Well, hey, wait a minute. What is terrorism?" Look, it was originally governments terrorizing their own people with excessive security.

1700

**Mr. Gilles Bisson:** Even France has figured it out. They're going the other way, along with Europe. They've actually lessened the restrictions on border crossings—

**Dr. Steve Mann:** Yes, they've opened up—

**Mr. Gilles Bisson:** —which is kind of interesting.

*Interjection.*

**Mr. Gilles Bisson:** Well, have you been to Europe lately? You walk into the Frankfurt airport, they don't even stamp your passport anymore.

**Dr. Steve Mann:** Yes. When you get to Europe, you don't even know you've cleared customs. I was walking out onto the street, and I said, "Oh, when did I clear customs?"

**Mr. Gilles Bisson:** Exactly. It's interesting. We've taken a completely different approach, and I think that's



the point you were making. You're saying, "Should we really be going down this route?"

**Dr. Steve Mann:** Yes. The world's opening up in many ways. There are all these questions about terrorist nations.

**Mr. Gilles Bisson:** Thank you.

**The Vice-Chair (Mr. David Oraziotti):** Thank you, folks. That concludes the time for your presentation. Thank you very much, Mr. Mann.

#### ALLIANCE FOR EQUALITY OF BLIND CANADIANS, TORONTO CHAPTER

**The Vice-Chair (Mr. David Oraziotti):** We have one more presentation: Alliance for Equality of Blind Canadians, Toronto chapter, Phil Wiseman, vice-president. Would you like to come forward? Thank you very much for being here today, Mr. Wiseman. You have 15 minutes for your presentation. Any time that you do not use in your presentation will be divided up for questions among the parties. Please state your name for the purposes of our recording Hansard, and proceed when you're ready.

**Mr. Phil Wiseman:** Thank you for allowing me to come and speak with you this afternoon. My name is Phil Wiseman. I am vice-president of the Toronto chapter of the Alliance for Equality of Blind Canadians. We represent a national organization of blind, deaf-blind and partially sighted Canadians and friends of the blind working together to try to enhance our rights through advocacy, public awareness and other initiatives.

Our chapter has been involved in working on lobbying the government to implement a non-driver driver's licence since 1996. We have tried a number of ways. We started a petition and collected 850 names. We managed to meet with the Minister of Transportation in 1999, when we submitted the signatures. We've tried to establish numerous contacts with the minister to try to see what we could do to expedite this. We thought that perhaps all government politicians needed to be made aware of the issue, so we embarked on a letter-writing campaign to all the MPPs, and then we did our best to make contact with as many MPPs personally in our communities. When we went out to speak in the community, we were telling people about this issue.

Before people should run into their houses and lock their doors for fear of the blind hitting the road with their guide dogs, let me assure you that won't be the case. Let me explain to you why we feel so strongly that this establishment of a non-driver driver's licence is so important to us. For many, many years the blind, deaf-blind and partially sighted in Ontario have not had an acceptable means of identifying who they are. There are many services that many people take for granted, such as opening a bank account, cashing a cheque, going to rent a video, renting a tuxedo and numerous, numerous cases where people try to access everyday services and they are denied access to these services because they do not possess a driver's licence. Unfortunately, with my guide dog, I'm not allowed to drive. It would be interesting if I

did try, but I digress. Implementing Bill 85, although I realize our initiative is only a small part of the enhanced driver's licence, would satisfy the need of giving us the access to all the services I mentioned.

The other thing I should point out is that the main mandate of the Ontarians with Disabilities Act, which was passed in 2005, is to eliminate barriers. It is our opinion that implementing this bill will do just that. It will allow us access to cash cheques in the bank, open bank accounts and do all those things I mentioned. Even last week, I should tell you, with the elections that took place, even with a passport, people were still denied access to vote, because a passport alone was not sufficient. Yes, it has your picture, signature, date of birth and name, but it does not include your address. The enhanced driver's licence, we believe, does and would cover that.

The other thing I wish to point out is that not only would blind, deaf-blind and partially sighted people be well served by this but also all other non-drivers in Ontario, including seniors, students going to school and other non-drivers. With the costs of maintaining a vehicle, maintaining its upkeep and paying for insurance spiralling, many people simply choose not to drive because it is too expensive for them, so they are in the same position as we are: not having a valid piece of identification to identify to people and validate who they are.

In conclusion, the only thing I can say is implementing Bill 85 would eliminate the barriers we encounter and would provide additional revenue to the government from people who currently don't have a driver's licence and would help economically in these tough times. I hope that the committee will recommend this bill be passed and implemented. I thank you again for allowing me to speak.

**The Vice-Chair (Mr. David Oraziotti):** Thank you very much, Mr. Wiseman, for your presentation, and if you can bear with us, we have questions for a few minutes. Each caucus will have two minutes. We'll start with Mr. Klees.

**Mr. Frank Klees:** Thank you, Mr. Wiseman, for your presentation and for a very unique perspective on this issue. Is there some information specifically that would apply to blind, deaf-blind or partially blind individuals that you would want to see on this information to meet your specific needs?

**Mr. Phil Wiseman:** Well, to be very honest with you, when this idea was first brought to our attention, to show you how simple it was back then, it was the same plastic photo ID of a driver's licence that on the back had a sticker indicating "For identification purposes only." Personally, I don't think we're after anything specific that isn't already on a driver's licence.

Perhaps the only thing I could add is that there could be some tactile marking on the identification card for anyone who can read Braille, or something that would be unique. It could be a notch at the corner of the card to help them identify that this is my driver's licence. People



who are generally blind have unique ways of being able to identify which card is which. For sure, if it has Braille on it, that would be best.

I realize on a small card you can't put large print, but that's why I say in terms of information on it, I cannot see anything in addition that we would be asking for. We just want a card for ID.

1710

**Mr. Frank Klees:** That's why I asked this specific question, because we need that perspective. I know the parliamentary assistant is listening and the government will take that into consideration. Thank you so much.

**Mr. Phil Wiseman:** Thank you very much.

**The Vice-Chair (Mr. David Oraziotti):** Mr. Bisson.

**Mr. Gilles Bisson:** Thank you very much. Your suggestion that we put Braille on the card is one that we will take seriously. We'll put an amendment forward on behalf of yourself and others. That's something that we should have, quite frankly, thought about at this point; I'm surprised we didn't. But such is the struggle.

In regard to this, I understand the need for having some sort of photo ID for the everyday life interactions that we have in society. I think all of us have supported that on all sides of the House. However, do you have any concerns about the data being collected being data that might not be suitable for privacy issues?

**Mr. Phil Wiseman:** Well, I suppose the only thing that we can ask for is that the information on the card be as secure as possible. I'm not a technical person, so I'm hardly in a position to suggest how that be done. But in the worst-case scenario, there is no such technology out there that would keep it secure. We would be just as happy if we could have the plasticized driver's photo ID with a sticker on the back. That would still meet our needs. I know that's very simplistic, but we figure as long as you're enhancing the driver's licence, we are pleased that our needs are being met with this bill.

**The Vice-Chair (Mr. David Oraziotti):** Mr. Brown.

**Mr. Michael A. Brown:** Thank you, Mr. Wiseman. I appreciate your comments. Just to be clear—there seems to be some confusion. There are actually four cards being proposed here. There's a photo ID card, a driver's licence, an enhanced photo ID card, which could be used for crossing borders, and an enhanced driver's licence. I was just mentioning that to be helpful. The information

on the normal photo ID card would be treated the same way as the driver's licence.

I think my colleague has a question.

**Mr. Phil Wiseman:** Okay. Thank you.

**Mrs. Carol Mitchell:** Thank you, Mr. Wiseman. I just have a quick question.

**The Vice-Chair (Mr. David Oraziotti):** One minute, Mr. Wiseman—if you have time for one more question.

**Mr. Phil Wiseman:** I'm sorry.

**Mrs. Carol Mitchell:** I just wanted to give you the opportunity, Mr. Wiseman. In your conclusion, you've stated that you have some concerns regarding privacy. I just wanted to give you the opportunity to expand on what your concerns are directly. I know they're included with your brief.

**Mr. Phil Wiseman:** I'm sorry, could you please repeat the question? My hearing aid has died on me, so I'm a little bit hard of hearing.

**Mrs. Carol Mitchell:** In your conclusion of your paper that you were presenting today, you have said that you have concerns regarding privacy that you want to see addressed, and you talked about your mandate. I wanted to give you the opportunity to specifically address what your top concerns are with regard to privacy.

**Mr. Phil Wiseman:** I assume that when I say "privacy," you're prepared to guard against any hackers who could tap into the database. I assume with the information being maintained on a database that stores all of this information, we would want to ensure that this information be kept secure and confidential—encrypted, I assume. I can't think of anything else that we would be asking for to ensure that the information remains secure, safe and private. I'm sorry, that's about all I can say.

**Mrs. Carol Mitchell:** Thank you very much.

**The Vice-Chair (Mr. David Oraziotti):** Thank you, Mr. Wiseman, for your presentation.

Committee, just before we wrap up, a couple of items regarding the subcommittee report: that the research office will provide the committee with a summary of the presentations prior to noon on Wednesday this week, October 22; that for administrative purposes, the proposed amendments will be filed with the committee clerk by 5 p.m. on Thursday, October 23; and that for our meeting purposes, clause-by-clause will be next week, a week today, on October 27, in committee room 151.

That concludes today's presentations.

*The committee adjourned at 1715.*











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First Session, 39<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 39<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 27 October 2008

# Journal des débats (Hansard)

Lundi 27 octobre 2008

## Standing Committee on General Government

Photo Card Act, 2008

## Comité permanent des affaires gouvernementales

Loi de 2008 sur les cartes-photo



Chair: Linda Jeffrey  
Clerk: Trevor Day

Présidente : Linda Jeffrey  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Monday 27 October 2008

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Lundi 27 octobre 2008

*The committee met at 1404 in room 151.*

## PHOTO CARD ACT, 2008

## LOI DE 2008 SUR LES CARTES-PHOTO

Consideration of Bill 85, An Act to permit the issuance of photo cards to residents of Ontario and to make complementary amendments to the Highway Traffic Act/ Projet de loi 85, Loi permettant la délivrance de cartes-photo aux résidents de l'Ontario et apportant des modifications complémentaires au Code de la route.

**The Chair (Mrs. Linda Jeffrey):** We're here to consider Bill 85, An Act to permit the issuance of photo cards to residents of Ontario and to make complementary amendments to the Highway Traffic Act.

Before we begin clause-by-clause consideration, there's some background information on your desk that was requested from GS1 Canada in the course of the hearings.

Beginning with our first motion. Mr. Klees.

**Mr. Frank Klees:** I move that section 1 of the bill be amended by adding the following definition:

"'Biometric information' means information derived from an individual's unique characteristics but does not include a photographic or signature image;"

The reason for this amendment is that we believe that biometric information should be defined separate and apart from the term "information" as used in Bill 85. This definition is borrowed from the Ontario Works Act, 1997, and the Ontario Disability Support Program Act, 1997.

Separating biometric information from the term "information" is important to tailor the legislation to the purpose of the minister's facial recognition program, which is to reduce fraud in obtaining a driver's licence or other photo card.

Under sections 6 and 33, in combination with paragraph 7 of subsection 11(4) or paragraph 6 of subsection 205.0.1(4), at section 44 of Bill 85, the minister could disclose biometric information to all levels of government and others when an individual accesses benefits or services. As written, the legislation may well allow for biometric information to be used as a verification procedure at all levels of government, and this is outside the scope of the proposed program.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** The government believes this definition to be unnecessary. The government is proposing to limit disclosure, under subsection 11(2) of the act and the reflecting provision of the Highway Traffic Act, of the measurements derived from photo comparison technology, which amounts to biometric information, as the member knows. We think that speaks to the concerns the member has.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Frank Klees:** I distinctly remember the minister, when he came forward to this committee, referring to the submissions of the privacy commissioner and expressing his desire and the government's desire to take into consideration, seriously I assumed at the time, the privacy commissioner's best advice. This amendment is taken from the privacy commissioner's report, on page 12, which I'm sure the parliamentary assistant is familiar with. I would ask him, given the fact that this is a recommendation of the privacy commissioner, on what basis or why he feels we shouldn't take the advice of the privacy commissioner in this particular case.

**Mr. Michael A. Brown:** We appreciate your concerns. We believe them to be addressed in subsection 11(2) of the bill. We are very cognizant of the suggestions that have been made by the Information and Privacy Commissioner. We appreciate her presentation to us. We are taking those issues seriously. We just believe this to be, at best, redundant and probably not helpful.

One of the things I think I should point out to the member is that these measurements, at least at this point in time, are not very valuable to anyone. Each jurisdiction uses its own technology to do this, and you cannot transfer the technology from one jurisdiction to another in any event. Nevertheless, we take this very seriously. We do not want to be passing that kind of information along. We understand there is a distinction between those two sorts of information—whether it's biometric or general information. We appreciate this. We just cannot support this particular amendment. We hope to deal more with this later in the bill.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Frank Klees:** Chair, I've made my point. Thank you.



**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

Seeing none, all those in favour of the motion? All those opposed? That's lost.

The next motion. Mr. Hampton.

**Mr. Howard Hampton:** I move that section 1 of the bill be amended by adding the following definitions:

"'biometric information' means information derived from an individual's unique characteristics but does not include a photographic or signature image;

"'radio frequency identification technology' means a technology that uses radio waves to transmit data remotely to a scanning device that is capable of reading the data;"

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If I may, the rationale for this, again, goes back to the Information and Privacy Commissioner's comments. We believe, after hearing from the Information and Privacy Commissioner, that there needs to be some tightening up of this bill. In terms of the protection of people's information and in terms of the technology that the government wants to use, it is wide open to abuse. These definitions would, in our view, help to tighten up what we think is legislation that can be, and we believe likely will be, abused.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** Again, we share the view of the Information and Privacy Commissioner that these are serious issues and that we need to move forward with them. What the motion before us adds, in addition to the motion Mr. Klees has just put, is the notion of RFID technology. That, of course, is an operational concern, and something that is technical and feasible and that will be ongoing and ever-changing as we move forward, as technology changes. We as a government need the opportunity, as would any government, to respond to technological changes if they make good sense for the people of Ontario.

This is a technical amendment. We do not see this as being useful. As a matter of fact, we think the people of Ontario would want us to have the ability to move on with advances in technology as they appear.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Frank Klees:** I agree with the parliamentary assistant. I think the people want us to move on with these things, but they want it done in a responsible way, and particularly, it is technology that we have to be very careful about it. Obviously I support this amendment for the reasons I gave on our previous amendment.

I'm just concerned that the government is being far too cavalier about this. I think that we have, at the base of this bill, a very good bill. It's the right thing to do in terms of the principle behind it; we've expressed that. My concern is that we move forward cautiously and that we protect the privacy of the citizens of this province. I am concerned with the government's attitude and, once again, the unwillingness of government to accept what

are reasonable and straightforward amendments that would simply improve the legislation and provide safeguards.

I would ask for a recorded vote.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

Seeing none, a recorded vote has been requested.

#### Ayes

Bailey, Hampton, Klees.

#### Nays

Balkissoon, Brown, Kular, Mauro, Mitchell.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

Shall section 1 carry? All those in favour? All those opposed? That's carried.

Shall section 2 carry? All those in favour? All those opposed? That's carried.

Section 3: Mr. Hampton.

**Mr. Howard Hampton:** I move that section 3 of the bill be amended by adding the following subsection:

"Deadline for availability of basic photo card

"(3) The minister shall ensure that the basic photo card is available to the public on or before June 1, 2009."

There are really two issues, and again, we're trying to help the government sort this out. There is a need for a basic photo ID card. All kinds of people need it. If you want to go to vote now, if you want to rent a movie or if you want access to banking services, it would be wise to have a basic photo ID card. We think it is well within the government's operational possibility to have a basic photo ID card available for June 1, 2009. We think that some of the other issues that have attached to the bill, which we pointed out in our first amendment, are a lot stickier and deserve further consideration. But we think the government should and could have a basic photo ID card available that people could use. That would certainly help us on one front. As I said earlier, in my first amendment, we think some of the technology issues deserve greater scrutiny.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** As the member would know, the ministry is working very diligently to implement the basic photo card, as it is this entire bill. The member would know this is just a bill, and until this bill is proclaimed and in force, we obviously can't do some of the things we need to do. The time available to the government, under this, to provide it by June 1, 2009, I respectfully submit, is impossible.

The second thing is that I don't know of a bill that does have an implementation date in it and, while I appreciate that the member and I'm sure the government want to have this card available to Ontarians at the earliest possible date, I am not able to give the commitment that we could, as a government, meet those dead-



lines. Given the other concerns that are being raised about this bill, I think the member knows that some of these issues that we're talking about today have to be incorporated.

The second thing I think we need to understand is that what we are doing here in Ontario requires working with partners. They would be other provinces, they would be other American jurisdictions, they would be the US government and they would be the government of Canada, so there are a number of partners that we have to work with and satisfy as we go forward. The idea that we could have an implementation date that wouldn't take into account the consultations we may be involved in with other governments, while maybe laudable, I think is overly ambitious.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, shall the motion pass? All those in favour? All those opposed? That's lost.

Shall section 3 carry? All in favour? All opposed? That's carried.

No changes to sections 4 and 5: Shall they carry? Opposed? That's carried.

Section 5.1, new section. Mr. Hampton.

**Mr. Howard Hampton:** I move that the bill be amended by adding the following section:

"Photo card distinguishing physical feature

"5.1 The minister shall ensure that each photo card contains a distinguishing physical feature such that an individual, particularly a visually impaired individual, can readily locate the card and distinguish it from other cards that the individual may be carrying."

Once again, we talk about the issue of basic photo ID. It is becoming increasingly important in our society, and if the government wants to proceed down this road, we think now is a good time to ensure that this card has a distinguishing physical feature so someone who is visually impaired will immediately be able to know, "This is my photo ID card." This amendment would ensure that that happens. It would ensure that, in terms of this project moving forward, people who may be visually impaired and others will have their concerns, indeed, their human rights, addressed.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** I thank the member for putting forward this amendment. I would suggest that the government is already moving forward on this file.

We had a presenter—at least one last week—at public hearings that presented asking for this to be implemented. The ministry is working very hard, in conversation with stakeholders, to make sure that this is a part of the card when it becomes available. We are presently working with the vendor to see that this happens, but as the member would know from the public hearings, there were at least two suggestions within the presentation on how this could be done. Given that we are in conversation, this will happen. I don't think it requires an amendment to the bill to have that happen.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

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**Mr. Frank Klees:** I just want to support this amendment. It is in response to a very practical request that we heard during the public hearings. The parliamentary assistant has already committed that this would be done; what remains to be seen is exactly how. We understand that. Mr. Brown has been around this place a long time, and what he would know is that the more precise we can be as legislators in giving direction, the more assurance we have that things will be carried out as anticipated. So I would just like to know, if the government is already committed to doing it, why there would be an objection on the part of the government to allowing this amendment to be included in the legislation. What is the reason that government members would vote this amendment down?

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** I would just suggest to the member, knowing that it's going to happen anyway, it seems redundant. These kinds of detail are seldom, if ever, put into legislation. I'm sure that the government would hear loud and clear from members of the government side, members of the official opposition and members of the third party if we failed to keep this commitment. I believe this is a commitment that all of us agree with and that we will move forward. It is just unnecessary to put it in the legislation.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Howard Hampton:** The section is very generally worded. It doesn't prescribe a certain way; it doesn't describe or prescribe a particular method. It simply makes sure that this is part of the legislation. I would argue that one of the reasons that we don't have these measures in place already is because they haven't been put in legislation, and therefore when it comes down to the administrative or operational details, it's too easy to ignore them. This is something that I think should be almost boilerplate in legislation that we pass; that the needs of those who may be visually impaired or handicapped are also going to be attended to.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Michael A. Brown:** We would just argue that there are a number of acts that provide for the kinds of measures that Mr. Hampton has generously suggested we put into each and every piece of legislation. I don't think that is necessary. We have made the commitment. We're moving forward with this. It will be part of the implementation.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Frank Klees:** I really don't want to prolong the discussion, but I think that the parliamentary assistant has it clear when he says, "We simply want to argue." This is an opportunity. With an amendment like this, it really



would be an opportunity for the government to at least appear to take this process seriously. We will come to the end of this clause-by-clause sitting of this committee and Mr. Hampton, myself and Mr. Bailey, as members of the opposition who have worked diligently to prepare what we consider to be meaningful amendments—all of which have come from submissions from stakeholders, be it the privacy commissioner or others who have come forward—well-meaning amendments that in no way interfere with the intent of the legislation, intended only to improve it, to make it more precise, to help do what the government indicated it wants to do. Yet, I predict that we will be, at the end of this session, with none of the opposition amendments having been accepted or voted upon by the government as accepting. What it shows, unfortunately, is that this committee process, which really in my opinion is probably the most important aspect of the legislative process, where we as members of the Legislature have an opportunity to take into consideration points that have been raised during second reading debate, input from stakeholders and constituents, input from officers of the Legislature, and apply our best efforts to improve legislation and then, in the culmination of all of that process, this clause-by-clause sitting of this committee takes into consideration all of that and, quite frankly, should be the opportunity for the public to observe that their Legislature functions. Instead, what we'll have is an affirmation that so much of this process is nothing but a sham; that the input of the public is not welcome unless the government decides, in their wisdom, that all of their amendments are the only amendments that make sense. So if for no other reason but perception, if I was the minister, which I'm not—

**Mr. Michael A. Brown:** You were.

**Mr. Frank Klees:** Which I was. If I was the minister—and I believe if he were here, actually, he would say to his parliamentary assistant, “You know, I think this is a good amendment. Let's accept it,” if for no other reason but to legitimize the process. There's nothing to lose by accepting it, and it would only enhance the legislation. However, I rest my case.

**Mr. Michael A. Brown:** I have been moved by the arguments from the other side of the floor, this very cogent argument by Mr. Klees and Mr. Hampton and, by extension, Mr. Bailey. I'm pleased to indicate that the government will accept this amendment and we will be voting in favour.

**The Chair (Mrs. Linda Jeffrey):** Wow. Any further comments?

**Mr. Frank Klees:** Madam Chair, before you take the vote: This is a historic event in the life of this government. I think we should give the parliamentary assistant an opportunity to recess, gather his thoughts and ensure that this is really what he wants to do.

**The Chair (Mrs. Linda Jeffrey):** I think you should strike while the iron is hot.

Any further comments or questions? Seeing none, all those in favour of the new—

**Mr. Frank Klees:** Recorded vote.

## Ayes

Bailey, Balkissoon, Brown, Hampton, Klees, Kular, Mauro, Mitchell.

**The Chair (Mrs. Linda Jeffrey):** That's carried.

There are no changes to section 6. Shall it carry? All those in favour? All those opposed? That's carried.

Section 7. Mr. Hampton.

**Mr. Howard Hampton:** I move that section 7 of the bill be amended by adding the following subsections:

“Maximum fees

“(2) Despite subsection (1) and subject to subsections (3), the maximum fee that may be charged for the basic photo card is \$10.

“Recipients of benefits under Ontario Works Act, 1997 etc.

“(3) Despite subsection (1), a person who receives benefits under the Ontario Works Act, 1997 or the Ontario Disability Support Program Act, 1997 shall not be charged a fee for the basic photo card.”

The rationale for this is, we have need of a basic photo ID card. Let me say, the people who will probably have to access this the most will be low-income people. To get almost any service, they'll be asked to produce—because this will become the standard photo ID, and they'll be asked to produce it, and if you can't afford it, then you are cut off from many of the basic services in society. So I think there's an onus on us to ensure that this is affordable. A \$10 fee to have this basic photo ID card, I think, is reasonable. If it gets much beyond that, you're talking about a whole lot of people who can't afford it. For somebody who has to rely on Ontario Works or the Ontario disability support program, I think the fee should be nothing. We need to recognize that this is going to become, very quickly, standard ID. It will be the card that is asked for if you go to vote, if you want to use the public library, if you want banking services, if you want to rent a movie, and if we don't set a fee level for it, then I think what we're saying to a whole lot of people is, “Too bad, so sad,” because they won't be able to afford it.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Michael A. Brown:** I appreciate the comments from the member for Kenora.

The act already, in clause 7(b), permits the minister to charge different groups different fees for different cards. As you know, this legislation deals with four different types of identifications. We fully understand the argument that the member is making that there are people in society who may have difficulty paying for some of these cards. That's why the minister will be given the discretion to exempt certain groups and the minister will be working with his colleagues within the ministry to work to find a solution to what the member is suggesting.

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I think the people of Ontario also want us to have a reasonable cost to this card that would reflect, to some



extent, the cost recovery that will be involved with providing any kind of government service. We have to balance that as a government—the costs of providing the particular card against the affordability of that card—and the member can be assured we will be doing that and the specialized needs of specific groups will be taken into account. Therefore, we will not be supporting this particular amendment.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 7 carry? All those in favour? All those opposed? That's carried.

No changes to sections 8 through 10: Shall they carry? All those in favour? All those opposed? That's carried.

New section 10.1. Mr. Klees.

**Mr. Frank Klees:** I move that the bill be amended by adding the following section:

“Biometric information

“10.1(1) Given the sensitivity of biometric information, its use is to be limited for internal purposes within the ministry only.

“Override

“(2) Section 11 and section 205.0.1 of the Highway Traffic Act do not apply to biometric information.”

The proposed technology under Bill 85 would utilize a facial recognition software application that, as we understand it, will convert a photograph as has appeared for some time on our drivers' licences into a biometric template which allows comparisons within the ministry's database of driver photos. Although the digital photograph that the ministry currently holds may be considered, in some respects, a biometric, it's the conversion of these photographs into biometric templates that will allow the ministry then to perform the facial recognition comparisons.

The government, we believe, should make assurance that any biometric collected, even one that has been collected for some time, maybe on file, only be used internally for the sole purpose of identifying the identity of the cardholder. If the facial biometric is lost or stolen, it can't simply be replaced, such as a PIN number. The biometric information must be kept securely and provisions relating to photo comparison technology should be made transparent. Again this is an issue that was raised by the privacy commissioner, and we would ask the government to give consideration to approving this proposed amendment.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** What does this motion do? Well, what it does is, it limits the use of biometric information to internal ministry purposes and excludes it from the information that can be collected and disclosed by the minister under the Photo Card Act and the reflecting provision of the Highway Traffic Act. The government is already proposing to limit the disclosure, under section 11(2) of the act and the reflecting provision of the Highway Traffic Act, of the measurements derived from

photo comparison technology, which amounts to biometric information, and speaks to some of the concerns that the member is suggesting in his motion. I will tell you, though, that limiting the use of the biometric data to the internal use in the manner proposed could impede otherwise permissible disclosure of this information for law enforcement purposes, as permitted under section 42(1)(g) of the Freedom of Information and Protection of Privacy Act. So legitimate sharing with law enforcement would be prohibited, even though it is already permitted under the Freedom of Information and Protection of Privacy Act. So we would find that problematic.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Frank Klees:** In response to that, there would clearly be exceptions that would be made, and that's addressed in other parts of the legislation. What we're concerned about is that this is very broad. We have too many examples already of information that is within Ministry of Transportation responsibility that is already being made available to organizations outside of government, even, and it's a concern. That's an issue we still have to address, and in some respect is unrelated to this legislation. But what we want to ensure is that this in fact is only for internal Ministry of Transportation use, and we want to err on the side of caution. So that is the rationale for this amendment, and again I would ask the parliamentary assistant and his colleagues to consider that this is not something that I'm recommending; this is something that the privacy commissioner has recommended, the same privacy commissioner that the minister, when he was here, said he would take seriously, in terms of recommendations that she might have, to improve this legislation.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Michael A. Brown:** I just remind the member that this particular amendment, as it is drafted, would make the sharing of this information with legitimate law enforcement agencies impossible. I don't think that is what even the member intends, and I'm certain that's not what the Information and Privacy Commissioner would have recommended either, because it is permitted under clause 42(1)(g) of the act.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Howard Hampton:** Because the NDP amendment is so similar to the amendment that my colleague Mr. Klees has put forward—I think that the information and privacy commissioner says it very clearly on page 17 of her report: “The purpose identification and limitation privacy principle requires the body collecting personal information to identify the purposes for which the information is collected and to use or disclose the information only for those purposes.” What the government's got here is a section that is wide open. I think we have a real onus to protect the privacy of Ontario citizens who apply for this card. I think the government's approach here is far too wide open and will be open to abuse.



**Mr. Michael A. Brown:** I would just suggest to the member that he look at subsection 11(2) of the legislation, which significantly limits the disclosure that is permitted by the ministry or the minister. So we believe that this has already been addressed and that the provisions of the Freedom of Information and Protection of Privacy Act also need to be followed.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of new section 10.1. All those in favour? All those opposed? That's lost.

Having read the next motion, I believe the motion to be substantially the same as the previous motion, as Mr. Hampton mentioned, so I'm going to rule that out of order. Mr. Hampton, I think that you need to read it into the record, though. Then I'll be ruling it out of order.

**Mr. Howard Hampton:** I move that the bill be amended by adding the following section:

"Biometric information,

"10.1(1) The ministry may use biometric information solely for internal purposes.

"Override

"(2) Section 11 and section 205.0.1 of the Highway Traffic Act do not apply to biometric information."

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**The Chair (Mrs. Linda Jeffrey):** I'm officially ruling it out of order.

Section 11. Mr. Klees, you have the next motion.

**Mr. Frank Klees:** I move that subsection 11(1) of the bill be struck out and the following substituted:

"Collection and disclosure of information

"Collection by minister

"(1) The minister may only request and collect information from a body or related government if the information is objectively necessary for a purpose set out in subsection (4)."

This amendment confirms the principle of collection limitation or data minimization. This means, as we heard from the privacy commissioner, that the collection of personal information must be limited to only that which is necessary for special purposes, and that the amount of personal information collected must be kept to a strict minimum. This is embodied in the Freedom of Information and Protection of Privacy Act, subsection 38(2), which states, "No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity." It is expressly stated.

The Ontario Court of Appeal has also affirmed that underlying all three criteria is the requirement that government "attempt to restrict personal-data-gathering activity to that which appears to be necessary to meet legitimate social objectives." As the bill is written, personal information collected by the ministry could in fact lead to the possibility of basic, enhanced and combined photo cards containing, for example, race, religion, sexual orientation, marital status or even blood type in-

formation, and the ministry could, the way the legislation is written now, be allowed to potentially disclose all matter of personal information to a wide variety of levels of government, and even private individuals and companies, including unspecified persons and entities to be prescribed by regulation.

We don't believe that that is the intent of the government, but what we want to ensure is that the government is precluded from doing so. The only way that we do that is by ensuring that the legislation is specific to this issue. This is really the heart of the concern, which has been expressed by not only the privacy commissioner but numerous representations to the standing committee when it comes to this issue.

Once again, it's a straightforward amendment that is there for the protection of Ontarians. I'm going to assume that the parliamentary assistant will offer his assurances that what we are requesting will in fact be done and was in fact the intention of the government, but what we're asking is that we legislate to ensure that privacy will not be compromised.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** I want to assure the member that we agree that the intent is to do exactly as he says. We are just not convinced that this amendment does that. The bill already restricts the minister's collection to what the minister considers to be necessary for the listed purposes. Accordingly, his or her power in this section is limited in the sense that it is subject to the standard of reasonableness, and what is reasonable would be determined within the framework of the purposes set out in subsection 11(4) of the bill and the specific facts of any particular situation. I think the member should agree that his strongly felt interest in protecting the privacy of individuals is already in the legislation and that his particular amendment does not move that forward.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Frank Klees:** I disagree with the parliamentary assistant. If I agreed with him, I wouldn't have moved the amendment.

We believe that this section of the bill needs to be much more prescriptive and not leave anything to the imagination. I accept that the government has good intentions; however, it's only one government, and ministers and governments come and go. What we want to do here is ensure, regardless of who is the government, who is the minister, who is the parliamentary assistant, regardless of who the civil service is, regardless of what the mood of the province may be at any given time, that this legislation prescribes what information can be collected. It's not a safeguard for the government; it's a safeguard for the people of Ontario.

**Mr. Michael A. Brown:** Our only disagreement is that we believe the bill already does that. I have some real difficulty in understanding how "objectively necessary," which are the words that are used in the amend-



ment, furthers the cause at all, when the minister is restricted to working within the framework of 11(4).

**Mr. Frank Klees:** I refer the parliamentary assistant to page 24 of the privacy commissioner's report on this matter, which happens to agree with me and this amendment, and not the parliamentary assistant.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Howard Hampton:** It seems to me that there are really three principles at work here.

The first is, the government seems to be adopting a "trust us" attitude. I may trust the current government or I may not, but I don't know to what degree I can trust governments that may come in the future. I don't know anything about them. Everything I've read on information and privacy says that the "trust us" attitude is something that should be subjected to a lot of doubt.

The second point is the whole issue of data minimization. Information and privacy commissioners over and over again, not just in Ontario, but outside of Ontario and outside of Canada, have said that one of the fundamental principles is minimization of data. Governments should get the data that they need to do the job, not anything more. If you provide anything more and you provide a very loose set-up whereby that information can be exchanged, it's open to abuse.

The third issue, I think, one that we all ought to be concerned about, is accountability and transparency. I think, as I read the legislation as it is now, there is not accountability and transparency. It is too wide open. For that reason, I think, the Conservatives have put forward their amendment and I've put forward my amendment. They're very similar. There needs to be greater protection of the public; there needs to be greater protection of the information. That's why I think this is an important amendment.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Michael A. Brown:** We do not think this to be wide open at all. We believe that the language of the act, as it stands, restricts what the government can do and what the minister can do and what the ministry can do to a level that should satisfy other members.

We just don't see how the particular amendment that my honourable friend puts forward furthers any of the arguments. We won't be supporting this because we don't think that it provides any value added to the act.

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**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Howard Hampton:** Just this: I'll draw attention to our amendment, which is amendment number 9. I'm not trying to skip ahead, but I'm trying to illustrate the difference in the objective test. If you read the legislation as it stands now, "the minister may disclose information to any public body or related government, as he or she considers appropriate"—the test is pretty subjective. What we're proposing is, the minister is permitted to request to collect information from any public or related

government only as objectively necessary. It's a tighter test, and we think we ought to have a tighter test when it comes to this kind of information. If the minister considers it necessary is a much looser test than "objectively necessary."

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Frank Klees:** I would just ask the parliamentary assistant to help us understand what it is about the term "objectively necessary" that he objects to or that the government objects to. I hear what he's saying, that there's no intention of gathering information that would be of a personal nature and that the objective of the government is in fact to do as the amendment indicates, but there must be a reason for objecting to what is simply a further clarification and a very strong message to whoever would go about collecting information. There must be a reason why the government does not want to put that additional clarification into legislation, and I would be interested to know what that reason is.

**Mr. Michael A. Brown:** I, myself, don't know what "objectively necessary" actually means. "Objective to who?" would be the question. I've just taken the opportunity to quickly read section 11 in its entirety, especially subsection (4). I think that very specifically states what the framework is that the minister will use in releasing or disclosing information.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Frank Klees:** If I may, I think we've tried this three or four times; we'll try to come at it again, perhaps in a different way.

The parliamentary assistant states that he does not know what "objectively necessary" means. "Objectively necessary" is the opposite of "subjectively necessary"; I put it that way. "Subjectively" means that the minister is not going to be entrusted—not that we don't trust the current minister or the parliamentary assistant, but we're not going to trust that an individual is going to make the decision about what kind of information to collect. We want that to be measurable and we want the kind of information that will be collected to be clearly defined so that the minister or the deputy minister or whoever it might be can go to a place to determine what kind of information, specifically, can be collected, as opposed to determining one day that because he or she may feel that it's appropriate, given the circumstances of that day, to collect a certain type of information, the edict will be given that that information be collected. That's why we refer to the term "objectively necessary."

I'd ask the parliamentary assistant again to help me understand why there would be an objection on the part of the government to simply including this line in the legislation that would make it clear and protect everyone in the province.

**Mr. Michael A. Brown:** I guess the argument is, quite clearly, we don't think it does make it clear. We don't think it provides any additional value added, as I said, to the way the act reads at the moment. When you introduce



a term that is not clearly understandable—and that would be “objectively necessary.” I don’t think I know of other legislation that uses those specific words; maybe they do somewhere, but as far as I know, they don’t. It just does not help the process.

I think we’re on the same page in terms of protecting the information. We think section 11 does that. If the member could point out where he doesn’t think it does, specifically, then I would be interested, because I find it pretty clear in terms of what is permissible.

**Mr. Frank Klees:** I have to do this, only because the parliamentary assistant asked the question. There are at least three people in this room—I’d include my colleague Mr. Bailey, so that will make it four—who know what “objectively necessary” means. There is one other person who is an officer of the Legislature who also knows what it means. So I draw his attention to page 25 of the privacy commissioner’s submission to this committee. Under recommendation 18, and I will quote, “Sections 11(1) and (3) of Bill 85 should be amended to provide that only collections, uses and disclosures that are objectively necessary to accomplish the purposes set out in the section are permitted.”

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion?

**Mr. Frank Klees:** Recorded vote, please.

#### Ayes

Bailey, Hampton, Klees.

#### Nays

Balkissoon, Brown, Kular, Mauro, Mitchell.

**The Chair (Mrs. Linda Jeffrey):** That’s lost.

Next is an NDP motion, number 9. Mr. Hampton.

**Mr. Howard Hampton:** Hang on. I believe our amendment is the same as that which was proposed by the Conservatives. I know you’re going to rule it out of order, so—

**The Chair (Mrs. Linda Jeffrey):** You’re going to withdraw? Thank you.

The next motion, Mr. Klees.

**Mr. Frank Klees:** I move that subsection 11(3) of the bill be struck out and the following substituted:

“Disclosure to minister

“(3) Upon receipt of a request for information from the minister under subsection (1), a public body shall disclose to the minister any information from their records that is objectively necessary in assisting the minister with a purpose set out in subsection (4).”

I think I have a problem here, Madam Chair, given that the parliamentary assistant doesn’t understand what the term “objectively necessary” means. The fact that that term is used in this amendment means I can probably assume that this amendment will also be voted down. However, for the record, I’d like to give the parliament-

ary assistant and his colleagues on the government side an explanation as to why we believe this is important.

This amendment will make it incumbent on any public body to disclose to the minister upon receipt of a request for information from the minister any information from their records that, as I said, is objectively necessary to assist the minister as outlined in subsection (4). It is an extension of the principle that we’ve referred to previously of data minimization within the limited internal purposes of the ministry only.

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As this bill is written now, it allows any public body to decide subjectively what information may assist the minister and disclose that information to him or her. The current provisions give the ministry and public bodies overtly broad discretion to disclose personal information, which we happen to believe is dangerous. It is not perhaps the intention of the ministry, but it leaves the legislation open to allowing that to happen.

We believe it’s our responsibility as legislators to close that gap and to ensure that it won’t happen. That’s the purpose of the amendment.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Michael A. Brown:** What this amendment really does is provide that public bodies receiving a request for information from the minister shall disclose that information when it is objectively necessary to assist the minister with one of the listed purposes that are set out. He noted already the difficulty that we on this side have with understanding what “objectively necessary” means. Secondly, we don’t think we should put a public body in the position of having to subjectively decide what “objectively necessary” means and not respond to the minister with a reasonable request that the ministry would make under the framework of section 11, which, as I pointed out many times before, is very narrow in what it permits to be done. So we could have a situation where a public body would feel they would be subjectively imperilled by making the determination of his famous “objectively necessary.”

If you could help us with what “objectively necessary” is, we would be more likely to entertain this, but given there is no definition, we are quite happy with the way the legislation stands.

**The Chair (Mrs. Linda Jeffrey):** Mr. Hampton.

**Mr. Howard Hampton:** What it comes down to again is, the wording the government has chosen provides very broad discretion in the minister: “Well, yeah, I think this falls—therefore I’ll provide the information,” or “We think this generally is within the ambit; therefore, we’ll provide the information.”

“Objectively necessary” is much tighter. Courts have often considered the meaning of “objectively necessary.” I think another way of putting it would be the reasonable-person test: Does a reasonable person think that this, based upon objective criteria, is necessary? One protects privacy much more than the other. I think courts would be much happier dealing with the issue of “objectively



necessary” than dealing with the issue of what the minister may or may not subjectively think is important.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Any further comments or questions?

All those in favour of the motion? All those opposed? It's lost.

Next motion. Mr. Hampton.

**Mr. Howard Hampton:** It's the same motion, so I'll withdraw it.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Next is the government motion. I understand it's a replacement motion.

**Mr. Michael A. Brown:** It's 12R.

**The Chair (Mrs. Linda Jeffrey):** It's 12R. Does everybody have it in the front of their desks? It's a separate package that should be on your desk. It should say “12R” in the far right-hand corner. Who's reading it? Mr. Brown, are you reading it into the record?

**Mr. Michael A. Brown:** I move that section 11 of the bill be amended by adding the following subsection:

“Exception

“(3.1) The minister may not disclose under section (2) the measurements used for the comparison—”

**The Chair (Mrs. Linda Jeffrey):** Could you reread that line, please?

**Mr. Michael A. Brown:** Sorry?

**The Chair (Mrs. Linda Jeffrey):** You've missed part of the word. Could you just reread under “Exception”?

**Mr. Michael A. Brown:** “Exception

“(3.1) The minister may not disclose under subsection (2) the measurements used for comparison of photographs as described in section 6.”

I think that's obvious. The government is moving forward to take into consideration what my honourable colleagues on the other side have suggested, in that the measurements from photographs should not be disclosed to other jurisdictions.

**The Chair (Mrs. Linda Jeffrey):** Any comments or questions?

**Mr. Michael A. Brown:** I would consider this to be friendly.

**The Chair (Mrs. Linda Jeffrey):** Mr. Klees.

**Mr. Frank Klees:** We have a previous amendment to the same section that had different wording, and I wonder if the parliamentary assistant could explain to us why there was a change in that wording from the original amendment.

**Mr. Michael A. Brown:** I don't think I have a copy of the original amendment.

**Mr. Frank Klees:** I'll read it to you, with your permission. The original amendment that I have in front of me here read, under the “Exception” part:

“(3.1) The minister may not disclose under subsection (2) the measurements derived from the use of photo-comparison technology under section 6 to compare the photographs of applicants for or holders of a photo card or driver's licence.”

I understand if the parliamentary assistant doesn't have that answer. Perhaps we can get an explanation from staff.

**Mr. Michael A. Brown:** I will ask the staff to respond.

**The Chair (Mrs. Linda Jeffrey):** Okay. Could you come forward, and when you get yourself settled, could you give your name and your title for Hansard?

**Mr. Todd Milton:** Todd Milton. I'm counsel with the Ministry of Transportation.

There was no intention to change the meaning of the provision. It was simply to track the language used in section 6, which refers to “photo-comparison technology.” The previous version used the term “derived from the use of photo-comparison technology,” and this basically says “the measurements used for comparison of photographs.” So basically it's just repeating back the language of section 6.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, shall the motion carry? All those in favour? All those opposed? That's carried.

Mr. Klees, you have the next motion, number 13.

**Mr. Frank Klees:** I move that subsection 11(4) of the bill be amended by striking out paragraph 6 and substituting the following:

“6. To provide the Canada Border Services Agency or the Department of Citizenship and Immigration with information and records for the sole purpose of authenticating a photo card.”

This amendment defines the limited purpose of a collection of information and records for authenticating photo cards and nothing else. Again, it's in the interest of limiting the application. There's a problem posed by combining all proposed cards into the term “photo card” despite different purposes for the cards. Section 11(4)6 permits the ministry to provide a potentially wide variety of personal information to two federal government entities for unspecified purposes. It permits disclosure to the Canada Border Services Agency and to Citizenship and Immigration Canada. It's unlikely that these two departments would need the information for the same purposes. The lack of specificity could lead to a questionable scenario, and again, it's simply in the interest of clarifying that this amendment is proposed.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** I appreciate the amendment. What it does is it restricts the purpose set out in paragraph 6 of section 11(4) to authenticating a photo card by the Canada Border Services Agency or the Department of Citizenship and Immigration. The member would know that the Canada Border Services Agency and the Department of Citizenship and Immigration will not be authenticating the photo cards. CBSA must be provided with information about the issuance, renewal and cancellation of EDLs and enhanced photo cards, as they, in turn, will be requested to confirm the validity of these cards by the US when presented by the cardholder at the US land and water border crossings.



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The CIC has an oversight and quality assurance role in the enhanced card program. This amendment would restrict the minister's ability to disclose the transactional information that CIC requires from MTO. MTO will confirm with CBSA and CIC if MTO can make available the memorandum of understanding between the province and the federal organizations. In other words, there will be an audit by the federal authorities—the CBSA and citizenship and immigration—to see that the province is issuing these cards in an appropriate way, because they are providing us with some information and we are sharing that information. It is therefore a quality control mechanism where they will need to have access to this information. Your amendment would stop that. Essentially, this is just to determine the validity of our systems.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Frank Klees:** Just to clarify, if I might, the parliamentary assistant has it wrong. This amendment would not stop any verification of information; what this amendment simply does is ensure that any information that is disclosed would be for the sole purpose of authenticating a photo card. So there's no interference with the process; it is doing simply what I've heard repeatedly from the parliamentary assistant in that it would be strictly for limited purposes. Again, it's a matter of clarification, not in any way to interfere with the process.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Howard Hampton:** I have a question on this. Surely when somebody approaches the border, it seems to me the question that the card is designed to answer is that it's authentic identification; it's not fraudulent.

**Mr. Michael A. Brown:** True.

**Mr. Howard Hampton:** I have difficulty imagining what else needs to be added on.

**Mr. Michael A. Brown:** Is that a question to the parliamentary assistant?

**Mr. Howard Hampton:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Mr. Brown.

**Mr. Howard Hampton:** Either the card is authentic or it's not. If it's not authentic—

**The Chair (Mrs. Linda Jeffrey):** Can I ask you to go through the Chair, all questions at the same time?

Mr. Brown, do you want to ask some staff to assist you with the answers?

**Mr. Michael A. Brown:** I think this is a bit of a technical issue. I will ask the staff if they can help us with this.

**The Chair (Mrs. Linda Jeffrey):** Sure. Again, as you make yourself comfortable when you sit down, could you identify yourself and where you work.

**Mr. Steve Burnett:** Steve Burnett, Ministry of Transportation.

With respect to the role of the Canada Border Services Agency and Citizenship and Immigration Canada, they're not playing an authentication role; they're playing a data stewardship role. We're issuing cards based on docu-

mentary evidence that's provided by the applicant to the province. Based on that documentary evidence, our examination of that documentation and the questioning of the applicant, we will issue a card.

The Canada Border Services Agency is the interface between the various provinces' data and the border. They're not authenticating the card when they receive the data; they're simply holding the data and making it available when someone comes to the border. When somebody comes to the border with a card, the border agent who's there will retrieve information from the CBSA database, which will contain a subset of our driver information, and they will then make a determination at that point whether they let this person in or not. It's the same with a passport. At the border, they're not authenticating the passport; they're simply accepting or not accepting the document that's tendered as being legitimate.

So there's not an authentication role that the federal government is being asked to play. The closest it comes is in the quality assurance of the program, doing a small subset of transactions to ensure that the issuance of these documents is consistent with what their practices would be, were they issuing these documents themselves.

**The Chair (Mrs. Linda Jeffrey):** Mr. Hampton.

**Mr. Howard Hampton:** I want to go back and use the words you used. Whether the passport is legitimate or not legitimate, it seems to me on a passport that's not authentic, right away you'd say it's not legitimate, right? No more questions.

**Mr. Steve Burnett:** Correct.

**Mr. Howard Hampton:** So part of the reason Ontario is collecting information is so that Ontario can have some faith in the authenticity of cards that you provide people with. Yes, I accept that border services may have all kinds of other issues based upon their database, but it seems to me that their interface with Ontario is: Is this an authentic ID or not? If it's an authentic ID, they can do all the stuff that they're approved to do under their legislation. It shouldn't involve Ontario at all; that's a different issue. If somebody presents an ID card that's not authentic, then that's it, right? You don't pass. So it would just seem to me that Ontario's sole test here is the authenticity of the card.

**Mr. Steve Burnett:** That would certainly be Ontario's—not so much the authenticity of the card, Madam Chair. The province would be in the position of verifying that the information provided by the applicant was consistent with who we understand this applicant to be. They'll come, they'll produce the records that we expect them to produce, the documentation that we expect them to have that complies with the legislation. At that point, based on the determination and the questioning at the point of service, we'll issue a card to that applicant. At that point, they receive a card. We have satisfied ourselves that they are who they say they are and that they are entitled to this card. Based on that determination, we then provide that information to CBSA. They don't open



up the file and review that and say, "Is this authentic or not?" It sits in their system.

So to say that we're providing information for the sole purpose of authenticating a photo card to CBSA, that isn't actually what we're doing at all. They're simply the data stewards and the conduit through which the border protection services in the States actually access the information. So the whole notion of authentication is actually problematic in this motion.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Howard Hampton:** Right away, we're back into the troubling issues that we were into originally. This bill has all kinds of subjectivity to it. You're saying that it's not just the card that is of interest at the border, it's the information that's been collected on the person in the background.

**Mr. Steve Burnett:** The card itself is the means by which that information is accessed. That's the whole premise of the program, that when someone comes to the border, the RFID tag is read by a reader at the border and it then accesses the system in Ottawa and pulls that information forward to the border agent, so that when the car arrives there, the information's there too.

**The Chair (Mrs. Linda Jeffrey):** Mr. Hampton, have we exhausted your technical questions? Now it's more of a policy issue?

**Mr. Howard Hampton:** Well, except the technical stuff is very related to the policy, and really related to the substance. I've heard government members say that information is adequately protected, but what I see is—I show up at the border with my card, and it's not just a question of, is this ID card authentic? It is all the information that is behind this card. I don't think there's adequate protection in this legislation for all the information that is behind that card.

1520

**The Chair (Mrs. Linda Jeffrey):** Mr. Mauro.

**Mr. Bill Mauro:** What is different—the information that an applicant for an EDL will voluntarily submit because this is a voluntary card; correct?

**Mr. Steve Burnett:** That's correct.

**Mr. Bill Mauro:** So anybody in Ontario who goes forward and applies for one of these cards will be doing so voluntarily. They're not forced to do this, and if they choose to do that, what information will they have to submit to achieve and receive an EDL that is different from what they would have to provide to achieve and receive a passport?

**Mr. Steve Burnett:** There's not a significant difference in the information that's required. In terms of the information required to apply for an enhanced driver's licence, the requirements are the same as for the driver's licence today. There's an approved document list that we will use and collect information on.

**Mr. Bill Mauro:** So there's no difference in terms of the information?

**Mr. Steve Burnett:** There's a difference in the way a couple of the documents would be used. For example, the

citizenship and immigration card and the birth certificate would no longer simply be used to establish legal name. It would also be used to establish citizenship. So there would be a difference in the use of these documents, but the documents—

**Mr. Bill Mauro:** But the information itself is not—

**Mr. Steve Burnett:** The documents are the same documents.

**Mr. Bill Mauro:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Howard Hampton:** Something that Mr. Mauro said set off something for me. To describe these as "voluntary" in the society that we now live in, do you really think these are just going to be voluntary cards and maybe a few of us will get them?

**The Chair (Mrs. Linda Jeffrey):** I'm sorry. Can I interrupt for a second? This is not a technical question. I think it's more of a policy question, so this question is directed to the PA.

**Mr. Michael A. Brown:** I agree. They are clearly voluntary. Whether the public chooses to have one or does not choose to have one is solely the responsibility of an individual. They may be seen by the public, by and large, to be something that is very good to have, but it is clearly not necessary that they have it. It may be convenient for them to have it. If you want to leave Canada and travel to the US by either water or land, you might prefer to have a passport. That would be the alternative, Mr. Hampton. People would have the opportunity to choose between those two if they wish to cross the border.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Michael A. Brown:** That's not our law. That is the admission to the US.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Howard Hampton:** I think you're going to find very quickly that this becomes almost standard ID.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions on the motion?

*Interjections.*

**The Chair (Mrs. Linda Jeffrey):** I'm sorry. If you want to speak, you need to indicate through me that you want to speak. Any members want to speak on this issue?

**Mr. Michael A. Brown:** I would just point out that we are talking about four specific cards, all of which are voluntary. You may have a photo ID. You may have a photo ID card that identifies your citizenship. You may have a driver's licence, or you may have a driver's licence that indicates your citizenship. In our society, all of those are voluntary. It may be convenient to have them, but one of them is all you'd be permitted. It is clearly not something that the government is saying you must have, and it will be one, I'm sure, that some people choose not to have. But I'm sure that a large number of Ontarians will find it useful to have some kind of photo iden-



tification as most Ontarians or the vast majority of adult Ontarians have drivers' licences.

**The Chair (Mrs. Linda Jeffrey):** Mr. Klees.

**Mr. Frank Klees:** Just a question to the parliamentary assistant: Is there an assumption that the ministry has made as to the number of these cards that would in fact be processed? I'm assuming that for the purposes of the RFPs and if someone's going to be bidding on this contract, there must be some assumptions that have been made in terms of how many cards we expect would be processed.

**The Chair (Mrs. Linda Jeffrey):** Mr. Brown.

**Mr. Michael A. Brown:** I would say to the member that we recognize the challenge of providing these cards, particularly in response to the American government's insistence that travellers to the US have a document that is either a passport or a document that provides citizenship information in a form that they believe to be adequate. I believe there will be significant take-up amongst Ontarians. The ministry understands that, and the ministry understands the challenge of that. I don't think the ministry knows at this point—I could be wrong on this; I might defer—how many may choose to do this, but I know we intend to move forward with pilot projects because it would be literally impossible, as we know from the federal experience with passports, to ramp this up so that every Ontarian overnight could access this card immediately on proclamation of this act. There is a staged implementation, and we will be targeting various places in the province that in all likelihood would have the highest need for the card and roll that out.

I think the member is right: This will be a considerable technical challenge for the ministry to deal with. We do think there will be a fair number of people that do it. I don't think the ministry knows exactly how many would apply. Maybe you could help us with that.

**Mr. Frank Klees:** Chair, could we hear from staff who may have some information in terms of what assumptions are being made at this point.

**The Chair (Mrs. Linda Jeffrey):** Sure. Could staff come forward, and just state your name again for the record.

**Mr. Steve Burnett:** Steve Burnett, Ministry of Transportation. We're relying on some analysis that had been done by Ipsos Reid and also the findings of other jurisdictions that were involved in other EDL activity. We're estimating slightly under half a million cards over the five years of the program, with a lot of that front-ended in the first two years. That's the estimate we have: approximately half a million. That's a fairly conservative update based on the driver population.

**Mr. Frank Klees:** Could you clarify your comment about front-ended? How do you see this rolling out?

**Mr. Steve Burnett:** We expect that there'll be demand in the target areas right at the beginning. We'll put a process in place with Service Ontario to manage the demand and ensure that people aren't waiting (a) a long time, or (b) that we're not creating lineups. There'll be an

appointment process for people coming into offices and going through the application process.

We have the capacity to expand fairly quickly if we find that demand is higher than anticipated, but at the moment, and based on what we're seeing for example in New York state, who implemented last month, our demand numbers are pretty consistent.

**Mr. Frank Klees:** Has a service provider been selected?

**Mr. Steve Burnett:** For the production of the cards themselves?

**Mr. Frank Klees:** Yes.

**Mr. Steve Burnett:** Yes, it has.

**Mr. Frank Klees:** Can you tell us who that is?

**Mr. Steve Burnett:** That's our current driver's licence provider.

**Mr. Frank Klees:** Pardon?

**Mr. Steve Burnett:** The current driver's licence provider is also providing this card.

**Mr. Frank Klees:** For the record, could you tell us who that is?

**Mr. Steve Burnett:** That's Giesecke and Devrient Systems Canada, Inc.

**Mr. Frank Klees:** They're located where?

**Mr. Steve Burnett:** In Markham, Ontario.

**Mr. Frank Klees:** It's the right part of the province. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions on this motion? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Government motion. Mr. Brown.

**Mr. Michael A. Brown:** I move that paragraph 6 of subsection 11(4) of the bill be struck out and the following substituted:

"6. To provide the Canada Border Services Agency or the Department of Citizenship and Immigration, or the successor to either of them, with information and records regarding the issuance, renewal or cancellation of an enhanced photo card or a combined photo card."

**The Chair (Mrs. Linda Jeffrey):** Any comments or questions?

**Mr. Michael A. Brown:** This is a relatively simple and straightforward amendment. It just takes into account the potential that in a reorganization of the federal government or departments thereof we will be able to maintain the relationship that is suggested in this bill.

**The Chair (Mrs. Linda Jeffrey):** Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? It's carried.

The next motion is Mr. Hampton's.

1530

**Mr. Howard Hampton:** I move that subsection 11(4) of the bill be amended by striking out paragraph 6 and substituting the following:

"6. To provide the Canada Border Services Agency with information and records regarding the issuance, renewal or cancellation of an enhanced photo card or a



combined photo card for the sole purpose of authenticating the photo cards.

“6.1. To provide the Department of Citizenship and Immigration with information and records solely to verify the accuracy of the province’s list of Canadian citizens.”

This flows directly from the Information and Privacy Commissioner’s discussion and recommendation, where the Information and Privacy Commissioner recommended that this subsection should be divided into two separate clauses, one dealing with the disclosure to the Canada Border Services Agency and one dealing with the disclosure to Citizenship and Immigration Canada and amended to specify the types of information, and purposes for which, the border service agency and Citizenship and Immigration Canada respectively may be provided with.

Again, we think what is there now is far too loose. They use information differently, they require different information, and that’s the only information they should get.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** The member is correct: It does divide the two departments. The problem here is that the province does not have a list of Canadian citizens that would need to be verified by the Department of Citizenship and Immigration. CIC has an oversight and quality assurance role in the enhanced card program, and this amendment would restrict the ministry’s ability to disclose the transactional information that CIC may require from MTO. MTO will confirm with the CBSA and CIC if MTO can make available the memorandum of understanding between the province and the federal organizations.

Does that help the member? We do not keep a list of Canadian citizens.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That’s lost.

Next motion, Mr. Klees. Number 16.

**Mr. Frank Klees:** I move that subsection 11(4) of the bill be amended by striking out paragraph 7.

We believe that paragraph 7 should be deleted because once again, it allows the ministry to widely disclose information for a purpose unrelated to the original purpose of collecting information when an individual presents a photo card, driver’s licence or even vehicle permit in obtaining apparently federal, provincial or even municipal services and benefits.

Repeatedly, we’ve been advised by the parliamentary assistant that there are no intentions of having the use of this card broadened beyond the scope of its original intent. Yet when we read paragraph 7, it states specifically: “To provide a public body or related government with the information that the minister believes is necessary to assist it with a purpose similar to a purpose set out in paragraph 1, 2, 3 or 4 if the holder of a photo card”—and here’s the interesting thing and why we’re so con-

cerned about this—“has presented his or her photo card in order to obtain a benefit or service under a legislatively authorized program or service administered or provided by that public body or related government.”

Whether someone is going to the library and uses their photo card for identification or for any other service provided—apparently, the way this is worded—by any other level of government, this information is now available. We believe that that is inappropriate, we believe it’s wrong and it goes beyond the scope of what the government indicated that the purpose of this card would be. So we’re hopeful that the government members will approve this amendment. What are the chances?

**The Chair (Mrs. Linda Jeffrey):** Further comments and questions?

**Mr. Michael A. Brown:** The disclosure under this provision is limited to purposes such as verifying the accuracy of information, detecting false statements, authenticating documents, and preventing improper use of photo cards only where a photo card has been presented to a public body or related government in order to obtain a benefit or a service.

This provision allows the minister to support the anti-fraud measures of other government entities and should be kept in the bill.

As you know, motion 12 has already made sure that the sharing of biometric templates will be prevented, so I think that the member’s concern should be assuaged by my explanation.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Frank Klees:** So now the purpose of this photo card is to help other governments deal with anti-fraud issues. That was never stated when this photo card was brought forward. This was brought forward as a border-crossing identification. Now, when someone is asked to present a card, what comes to bear is an anti-fraud screening, if you will. Did I hear you correctly?

**Mr. Michael A. Brown:** The member, I think, is misunderstanding. As he knows, there are four cards available under the photo card identification. One of the purposes is so that Frank Klees can identify himself as Frank Klees. I presume that is one of the things that someone would want to do.

We want to be able—and you would want yourself to be able to have your identification known. If you’ve made a false statement, if you have presented documents which aren’t authentic, the government obviously needs the ability to check those documents. That’s what we’re talking about here, authenticating identification that may be presented to us so that the person seeing your photo ID card, whichever one it happens to be, knows that you are the person indicated on the card. That requires some sharing of information, as you might expect.

**Mr. Frank Klees:** I hear the parliamentary assistant’s explanation. It concerns me, because it is a departure from what we’ve heard the sole purpose of this card would be. That’s why we’ve asked for the deletion of this paragraph, because we think that this paragraph is incon-



sistent with the purpose for which the original information was stated would be collected.

I think that all of our concerns for privacy and for carefully guarding the information that is collected, and for very clearly defining for what purpose information is being collected, are underlined now by the parliamentary assistant's response to this very question. I would ask him once again to give consideration to the originally stated purpose of this bill, let alone the card itself and the technology that's being used, and agree that we eliminate this very broad scope of application that's anticipated under paragraph 7.

1540

**The Chair (Mrs. Linda Jeffrey):** Mr. Brown.

**Mr. Michael A. Brown:** The reason for sharing information would be to verify the accuracy of the information that an applicant has provided to the ministry. I don't know how we could avoid doing that. We need to be able to, as a ministry—and as a government, for that matter—identify any individual as that individual. Therefore, we would have to be able to, for example, authenticate a birth certificate, if that was something that we needed to authenticate. I think the member would understand that you would have to share information between government agencies, as you do now. If you apply for a passport from the government of Canada, they have the ability to authenticate other documents. You must have that or you cannot issue the identification with any kind of certainty. I understand the privacy concerns, but I do not understand how you can issue any kind of a document without being able to verify the authenticity of the supporting documents for it. So any document the province issues must have the confidence that it is authentic, and it can only be authentic if the underlying identification is authentic.

**Mr. Frank Klees:** It's not a matter of authenticating information, it's a matter of disclosing information. That's what's at the heart here. What we're simply saying is, it's one thing to have the information available to you; it's another question of what you do with it. That is why we are calling on paragraph 7 to be deleted, because it goes beyond the scope of what is intended with this bill.

I rest my case, but I will point out to the parliamentary assistant again that we are not alone in calling for this. The privacy commissioner, on page 21 of her submission and in her recommendation number 14, shares our concern. We want to support her in requesting a very logical amendment that is consistent with the government's original intent of this legislation.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Howard Hampton:** If I can, the privacy commissioner was very clear: "Subsections 11(4)7 ... which allow the ministry to widely disclose information for a purpose unrelated to the original collection when an individual presents a photo card, driver's licence, or vehicle permit in obtaining federal, provincial and municipal services and benefits, should be deleted...."

It seems to me the government's confusing two things here. You collect information from an individual, so you can assess whether or not they should get this ID card, right? Once you present them with the ID card, if they use that, they should be able to use that ID card without having all of their information disclosed to question them again. It seems to me, if the ID card is worth anything at all, if this whole exercise is worth anything at all, you should be able to present the card without having to have all of your personal information disclosed again.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Mr. Brown? No. Any further comments or questions? Seeing none, all those in favour of the motion?

**Mr. Frank Klees:** Recorded vote.

**The Chair (Mrs. Linda Jeffrey):** You're going to have to ask a little earlier next time, Mr. Klees. I'll let it happen this time.

### Ayes

Bailey, Hampton, Klees.

### Nays

Balkissoon, Brown, Kular, Mauro, Mitchell.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

The next motion, number 17, is exactly the same. Mr. Hampton.

**Mr. Howard Hampton:** I think we should vote on it again.

**The Chair (Mrs. Linda Jeffrey):** I presume you're going to withdraw? So I'm going to rule that out of order. Number 18, Mr. Bailey.

**Mr. Robert Bailey:** I move that subsection 11(5) of the bill be struck out and the following substituted:

"Disclosure of personal information

"(5) The minister shall not disclose personal information in its custody or under his or her control except,

"(a) in accordance with part II of the Freedom of Information and Protection of Privacy Act;

"(b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;

"(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

"(d) where disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and where disclosure is necessary and proper in the discharge of the institution's functions;

"(e) for the purpose of complying with an act of the Legislature or an act of Parliament or a treaty, agreement or arrangement thereunder;

"(f) where disclosure is by a law enforcement institution,



“(i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or

“(ii) to another law enforcement agency in Canada;

“(g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

“(h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

“(i) in compassionate circumstances, to facilitate contact with the spouse, a close relative or a friend of an individual who is injured, ill or deceased;

“(j) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent’s behalf or, where the constituent is incapacitated, has been authorized by the spouse, a close relative or the legal representative of the constituent;

“(k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee’s behalf or, where the employee is incapacitated, has been authorized by the spouse, a close relative or the legal representative of the employee;

“(l) to the responsible minister; or

“(m) to the Information and Privacy Commissioner.”

Our opinion is that the legislation authorizing the transfers of personal information to these other jurisdictions requires that these transfers only be made subject to agreements to ensure confidentiality and security of that said information. Bill 85, in our opinion, fails to provide for such agreements. It actually contains provisions, such as subsection 11(5), that do away with any requirement to enter into such agreements. This, in our opinion, impedes the rights of those individuals to control the disclosure of their personal information and represents a serious infringement on the privacy rights of individuals, and was so indicated in the Information and Privacy Commissioner’s report on page 12, paragraph three.

The current provisions of Bill 85 override and frustrate the objectives of the Freedom of Information and Protection of Privacy Act to allow those individuals to exercise control over the disclosure of their personal information by government institution. This amendment applies to section 42 of the freedom of information and privacy act, to disclosures of that information, as so indicated on page 12 of that report.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** Subsection 11(5) is clearly not unique in Ontario legislation. Similar provisions exist in a number of other statutes: the Regulatory Modernization Act, 2007, section 8; Christopher’s Law (Sex Offender Registry), 2000; the Ministry of Correctional Services Act; the Occupational Health and Safety Act;

the Police Services Act; the Vital Statistics Act; the Land Titles Act; the Employment Standards Act; and the Financial Administration Act.

The purpose of subsection 11(2) is to protect the minister’s disclosure of personal information from being the subject of a privacy complaint made to the Information and Privacy Commissioner.

**1550**

Clause 42(1)(e) of the Freedom of Information and Protection of Privacy Act reads as follows:

“42(1) An institution shall not disclose personal information in its custody or under its control except,...

“(e) for the purpose of complying with an act of the Legislature or an act of Parliament or a treaty, agreement or arrangement thereunder.”

The minister is given a permissive authority under subsection 205.0.1(2) to disclose information, including personal information. The Information and Privacy Commissioner has held that a permissive authority such as that provided under subsection 205.0.1(2) does not satisfy the requirements of clause 42(1)(e) of the Freedom of Information and Protection of Privacy Act, under which disclosure can only be made where the institution disclosing the information is required by the relevant-to-disclose personal information.

It is also possible and likely that the minister’s disclosure under subsection 11(2) will fall under other Freedom of Information and Protection of Privacy Act disclosure authorities, such as FIPPA’s clause 42(1)(c), disclosure for the purpose for which information was collected “or for a consistent purpose,” but it may not always be the case. So it is recommended that subsection 11(5) remain as it is.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Frank Klees:** It may help if we consider the clause that we’re asking be deleted. I’d like to read it into the record. It reads as follows:

“Any disclosure of information under this section is deemed to be in compliance with clause 42(1)(e) of the Freedom of Information and Protection of Privacy Act and clause 32(e) of the Municipal Freedom of Information and Protection of Privacy Act.”

The concern, Madam Chair, and to members of the government, is with the word “deemed.” The parliamentary assistant made reference on a number of occasions to providing assurance that the government would be compliant with the provisions of the Freedom of Information and Protection of Privacy Act. His justification for turning down a number of our amendments and voting against them was because they would be adhering to the Freedom of Information and Protection of Privacy Act. What this clause does, however, doesn’t require them at all to comply. What it tells us is that we should once again trust the government, because at the outset we’re being told that regardless of what the government does, they are deemed to be in compliance. Frankly, it doesn’t matter how many other pieces of legislation have this same clause; we happen to believe



it's not appropriate, specifically in this legislation, which deals with the very issues of privacy.

The member referred to the privacy commissioner in justifying turning this amendment down, if I heard you correctly. Let me read you what the privacy commissioner said to us here regarding these deeming provisions:

"These deeming provisions also defeat the independent oversight of the collection, use and disclosure of personal information by government, which is entrusted to my office. Moreover, these provisions are inconsistent with section 43 of the Freedom of Information and Protection of Privacy Act and section 33 of MFIPPA, which state that personal information can only be used or disclosed for a consistent purpose if the individual might reasonably have expected such a use or disclosure."

It gets us back again—and I fail to understand the principle of this bill and what they're trying to achieve. What we cannot understand is why they are consistently resisting the advice of an officer of this Legislature and why they insist on a clause that is so questionable in terms of whether or not the minister and the government are truly on the side of individual citizens in this province and their right to personal privacy.

Why would you consider inserting this clause into this legislation rather than saying, "Any disclosure of information under this section must be in compliance"? Can the parliamentary assistant simply tell me why they wouldn't say that, as opposed to saying, "is deemed to be in compliance"?

**Mr. Michael A. Brown:** I think I will ask for some assistance from the legal folks. Todd?

**Mr. Todd Milton:** The intention behind this provision was to deal with a situation whereby a permissive authority to disclose personal information is given under a particular statute. If the institution discloses information in accordance with a permissive authority and then there's a privacy complaint in regard to that disclosure, the privacy commissioner has basically interpreted 42(1)(e) of FIPPA to mean that the authority you've been granted in the statute that you're citing is a mandatory authority, that you must disclose the information. A permissive authority to disclose is not considered sufficient to meet that test, so that was why this provision was put in there. The authority given to the minister is permissive, and in order to protect it from a privacy complaint, this particular language was used.

**Mr. Frank Klees:** That's what I thought, and therein lies our deep concern.

I, for one, would not want to be party to this clause. I say to members of the government, I don't understand how this got by the minister. I understand that it's very, very creative crafting, but what I don't understand is how, as legislators, we can allow this to stand. As I say, our job here is not to make it easy; it's to make it right. It's not to make it as simple as possible to deal with privacy concerns; it's to ensure that privacy concerns are in fact respected. To hear the justification for this clause to be that it gets around the privacy commissioner's opinion gives me great concern.

I know the government is under direction in terms of this issue, but I also can't believe, based on the information that we have, that any member of this committee would be willing to allow this clause to stand, knowing what we've heard. So, Chair, I would simply ask this: If it takes a recess for the parliamentary assistant to sit with his advisers, I would ask that they do that, because I cannot believe that, in good conscience, members of this committee would, based on the technical explanation we've had for this, want this to stand.

1600

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

Mr. Brown, did you have any comment? No? Okay, we're going to vote on the motion.

**Mr. Howard Hampton:** I'm going through what the Information and Privacy Commissioner said again, and she's very clear in saying disclosure of information to other bodies should only be by means of agreements that are carefully and strictly drafted. That would provide some protection in terms of people's information, but when you include this section, it means that those agreements are useless. As I said before, this legislation is wide open and when you put in clauses like this, it makes it even more wide open. It's just really hard to see how someone's private information is going to be protected by means of a clause like this. I appreciate that you may find these clauses in some other pieces of legislation, but we're not dealing with other pieces of legislation. We're dealing with legislation here that carries all kinds of a person's private information.

Maybe if counsel wants to try it one more time, why this has to be included—I don't get it.

**Mr. Todd Milton:** I don't think I can add too much, just that, as I say, if a statute gives you an authority to disclose information, it may not be sufficient in the event of a privacy complaint to deal with that particular disclosure, which is why this type of wording has been—

**Mr. Howard Hampton:** But the privacy commissioner says the way around that is to have very specifically worded agreements.

**Mr. Todd Milton:** I think the question of the agreements is coming up in subsequent motions as well.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none—

**Mr. Frank Klees:** Recorded vote.

**The Chair (Mrs. Linda Jeffrey):** A recorded vote has been requested.

**Ayes**

Bailey, Klees.

**Nays**

Balkissoon, Brown, Kular, Mauro, Mitchell.

**The Chair (Mrs. Linda Jeffrey):** That's lost.  
Mr. Hampton, you have the next motion. Number 19.



**Mr. Howard Hampton:** Our motion number 19 raises a similar concern to that raised in 18, specifically that the Information and Privacy Commissioner has it right: You don't need this section. This section—

**The Chair (Mrs. Linda Jeffrey):** Are you reading this into the record?

**Mr. Howard Hampton:** Sorry.

I move that subsection 11(5) of the bill be struck out.

As I've said, we agree with the Information and Privacy Commissioner. You don't need this section. If her prescriptions are followed, this section would be redundant.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Next motion. Mr. Bailey, are you reading this one?

**Mr. Robert Bailey:** Yes. I move that section 11 of the bill be amended by adding the following subsection:

"Limitation on collection etc. of information

"(5.1) The collection, use or disclosure of information under this act shall be limited to the purposes specified in the act."

Our feeling on this is that this amendment affirms that the disclosure of personal information under this act is to be limited to the purposes specified in the act—a necessary follow-up amendment following the amendments that limit how the minister may use personal information under the act as reported in the report to the committee, page 22, section 3.2.3.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Michael A. Brown:** What this motion does is limit the collection, use and disclosure of information under the act to the purposes set out by the act. The collection and disclosure is already limited to the purposes set out under subsection 11(4) of the act and also it includes the pre-existing collection and disclosure authority, for example, as provided in the Freedom of Information and Protection of Privacy Act preserved by subsection 11(6). The purposes for which information can be used would track the purposes for which it can be collected and disclosed.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

The next motion is a government motion. Mr. Brown.

**Mr. Michael A. Brown:** I move that section 11 of the bill be amended by adding the following subsection:

"Notice under privacy legislation

"(5.1) Any collection by a public body of personal information, as defined in the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act, disclosed to the public body under this section is exempt from the application of subsection 39(2) of the Freedom of Information and Protection of Privacy Act and subsection 29(2) of the Municipal Freedom of Information and Protection of Privacy Act."

What this motion does is where a public body collects personal information disclosed to it by the minister, the public body does not have to provide a notice of collection as required by the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act. This is just really a technical amendment to deal with the fact that the provincial privacy legislation requires that a notice of collection be given even in circumstances where personal information is collected indirectly by the public body in question. Public bodies to which FIPPA or the Municipal Freedom of Information and Protection of Privacy Act apply, and which collect personal information under this provision, would be vulnerable to privacy complaints if they do not give notice of collection. So it is recommended that they be exempt from this notice requirement.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

The next motion. Mr. Bailey.

**Mr. Robert Bailey:** I move that section 11 of the bill be amended by adding the following subsection:

"Restriction

"(6.1) Despite subsection (1), nothing in this act shall be taken to presume that the government of Ontario may create any additional collection or retention of personal information that already exists in the data files of the government of Canada."

Our background and opinion on this is that this amendment addresses the problems associated with database duplication in the privacy commissioner's report, on page 4. In our opinion, to create a mirror database of citizenship information that is already in the hands of the federal government could serve to propagate identity theft and lead to a potential of unintended consequences of error and inaccuracies that could arise in the process of recreating the existing citizenship information.

This is from paragraph 4, page 4, of the privacy commissioner's report: "The federal government already has" the capacity to "verify the citizenship of naturalized Canadians, and securely provide that information to a province ... upon request. This would ... be a more privacy-protective and cost-effective model..."

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Michael A. Brown:** This intended amendment limits Ontario's ability to collect and retain personal information existing in Canada's data files. The ministry does not intend to create a database of citizenship information, but it requires an authority to collect citizenship information in order to verify citizenship for the purposes of our enhanced cards. This could include information that resides in the Canadian government databases. The proposed approach requires that applicants provide documentary evidence, including evidence of citizenship, from an approved list of acceptable documents already established under the Canadian driver licence agreement—e.g., birth certificates or a Canadian immigration



certificate. MTO already keeps copies of those tendered documents for audit purposes.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Next motion. Mr. Hampton.

1610

**Mr. Howard Hampton:** I move that section 11 of the bill be amended by adding the following subsection:

"Disclosure of personal information, limitation

"(6.1) The disclosure of personal information by the minister and public bodies shall be limited to that which is objectively necessary and for the purposes for which the information was collected."

Again, we're getting back to the issue of objective tests of what information is necessary, and sticking strictly to the purposes for which the information was collected.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** The bill already restricts the minister's disclosure authority to what the minister considers to be necessary for the listed purposes, and that of public bodies is limited to that which the public body believes would assist the minister for these purposes.

Accordingly, the disclosure authority in this section is limited in the sense that it is subject to the standard of reasonableness, and what is reasonable would be determined within the framework of purposes set out in subsection 11(4) of the act and the specific facts of any particular situation. Therefore, we cannot support this amendment.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Next motion. Mr. Bailey.

**Mr. Robert Bailey:** I move that section 11 of the bill be amended by adding the following subsection:

"Use and disclosure of personal information, limitation

"(6.2) The use and disclosure of personal information by the minister and by public bodies and related governments shall be limited to that which is objectively necessary to establish a person's eligibility for a photo card."

As set out in the Information and Privacy Commissioner's report on pages 24 and 25, Bill 85, as currently written, could allow the ministry to "disclose personal information ... that may be only peripherally related, if at all, to the original purposes for which this information was collected."

Also, in 3.4.1 on page 25 of the report, she indicated this. This amendment would prevent that possibility from occurring.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Michael A. Brown:** The bill already restricts the minister's disclosure authority to what the minister considers to be necessary for the listed purposes, and that

of public bodies is limited to that which the public body believes would assist the minister for these purposes.

Accordingly, the disclosure authority in this section is limited in the sense that it is subject to the standard of reasonableness, and what is reasonable would be determined within the framework of the purposes set out in subsection 11(4) and the specific facts of any particular situation.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 11, as amended, carry? All those in favour? All those opposed? That's carried.

We have a new section, 11.1. Mr. Bailey.

**Mr. Robert Bailey:** I move that the bill be amended by adding the following section:

"Radio-frequency identification technology

"Privacy audit and risk assessment

"11.1(1) The government of Ontario shall conduct an independent privacy audit and end-to-end threat risk assessment that adequately identifies and addresses privacy and security issues pertaining to the protection of personal information and identity as a result of the implementation of a radio-frequency identification technology system.

"Compliance with guidelines

"(2) Any use of radio-frequency identification technology by the government of Ontario shall comply with the radio-frequency identification technology guidelines developed by the Office of the Information and Privacy Commissioner.

"Verification

"(3) The government of Ontario shall obtain verification of the compliance required under subsection (2) before implementation of any use of radio-frequency identification technology.

"Privacy-enhancing feature

"(4) The ministry shall work with a selected vendor to pursue adding a privacy-enhancing on/off switch for the radio-frequency technology tag embedded in the photo card."

As set out in the privacy commissioner's report on page 6: "There are well-known privacy and security vulnerabilities associated with" radio frequency identification technology, otherwise referred to as RFID. An unauthorized individual may intercept that data while an authorized RFID reader is reading the data. Skimming can occur when this individual with an unauthorized RFID reader gathers that information from a chip without the cardholder's knowledge. Cloning may then occur when the original RFID chip and its data are duplicated.

These vulnerabilities could lead to a host of undesirable consequences, such as identity theft, unauthorized identification and covert tracking and surveillance of individuals. As set out in the Information and Privacy Commissioner's report on page 7, the first paragraph, a radio frequency identification number "points to real, personally identifiable information. A social insurance number, a passport number or a driver's licence number



... when linked to personally identifiable information ... can be misused ... or used for unintended purposes that may cause real harm to real people. Identity theft is a case in point. It is ... the fastest-growing form of consumer fraud in North America.”

Also, there is a need now for an independent third party testing and evaluation of any system, prior to deployment.

This amendment, in our opinion, would address those concerns.

**The Chair (Mrs. Linda Jeffrey):** Any comments or questions? Mr. Brown.

**Mr. Michael A. Brown:** This is clearly not something that should be legislated. The threat risk assessment and the privacy impact assessment have already been built into the government approval checkpoints and have already been conducted. The government is already subject to audit scrutiny through the internal audit service and the Provincial Auditor.

A guideline should not be given the force of legislation—I think, respectfully, that’s what you were trying to do here. Neither does the Information and Privacy Commissioner approve government programs. The language proposed here requires that the government pursue but not implement. The availability of an application of specific privacy enhancing technologies for RFID chips in the enhanced drivers’ licences will be explored. However, the government cannot commit to their successful implementation.

We had some information last week that it was possible, commercially available and reliable—on/off switches on the RFIDs. We have done some investigation, we being the ministry. According to our vendor, they are not available at this time in a commercial sense or with any sense of reliability. We have been doing checking; we take this seriously. We believe that this could be a good idea, but we need to know that the technology we adopt is presently working and reliable. To date, the ministry is not convinced that is the case.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of new section 11.1? All those opposed? That’s lost.

New section. Mr. Hampton.

This is a replacement motion. Committee, you have 26; now 26r is the replacement motion that we’ll be reading.

**Mr. Howard Hampton:** I move that the bill be amended by adding the following section:

“Radio frequency identification technology

“Conditions

“11.1(1) If the minister decides to use radio frequency identification technology in the combined photo card or enhanced photo card, the minister shall ensure that the following conditions are met:

“1. Before the end of the phasing-in period, the minister must order an independent, third party privacy audit to identify outstanding privacy and security issues. The Office of the Information and Privacy Commissioner must approve the terms of the audit. The audit must be

tabled in the Legislature before the end of the phasing-in period.

“2. The sole purpose of the radio frequency identification technology chip shall be to identify approaching drivers and passengers at border crossings.

“3. The radio frequency identification technology must comply with the radio frequency identification technology guidelines developed by the Office of the Information and Privacy Commissioner.

“4. Any photo card with radio frequency identification technology must allow the owner to turn off the radio frequency identification technology transmission function.

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“5. A third party privacy audit must be initiated every three years after the phasing-in period is over, and the details of the audit must be tabled with the Legislature.

“Prohibition

“(2) No person, other than a representative of the Canadian or American border authorities or a representative of a prescribed agency, shall knowingly access information on a radio frequency identification technology chip on a combined photo card or enhanced photo card.

“Offence

“(3) Any person who contravenes subsection (2) is guilty of an offence and on conviction is liable to fine of not more than \$5,000 or to imprisonment of not more than six months or both.”

Once again, this comes straight out of the Information and Privacy Commissioner’s concerns: (1) about the technology, and (2) about the legislation which is—I think I can paraphrase here—overly loose in the face of technology that, as the parliamentary assistant says, there is some uncertainty about.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** The motion is predicated on, “If the Minister decides to use radio frequency identification technology.” The member would know that it is not an optional feature of the program. Enhanced driver’s licence programs can only be implemented if an RFID solution is included. The government is already subject to audit scrutiny through the internal audit service and the Provincial Auditor. A guideline should not be given the force of legislation. Neither does the Information and Privacy Commissioner approve government programs.

The language requires that the government implement. As I said, the availability of the application of any specific privacy-enhancing technologies for RFID chips in enhanced driver’s licences will be explored. The government is working with the privacy commissioner on this front and will continue to work with her. However, the government cannot commit to the successful implementation of a particular technology. The minister is, as I said, already subject to internal audit through the internal audit service and the Provincial Auditor.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?



**Mr. Frank Klees:** GS1 Canada made a presentation to our committee, and I had asked a specific question relating to the commercialization of an on/off switch. We received a follow-up from GS1, and I think all members of the committee have that. I have just had a chance to review this, and in GS1's submission they state this:

"GS1 Canada, Paratech and the Information and Privacy Commissioner, Ontario, have formed a partnership to develop a prototype Vicinity-RFID card in collaboration with a card provider to be identified, using this on/off switch technology and conforming to GS1 standards. A timeline for this prototype will be determined by early November 2008."

My question to the parliamentary assistant—and he may need assistance from staff on this—is whether or not the company referred to here by GS1, namely Paratech out of the UK, has already been contacted by the ministry and if the ministry has an opinion in terms of the technology. And second, given that the privacy commissioner and Paratech and GS1 report that they've formed a partnership, is the ministry also involved in that partnership, and are they prepared to work proactively with the partnership to determine the feasibility of this technology?

**The Chair (Mrs. Linda Jeffrey):** Mr. Brown.

**Mr. Michael A. Brown:** I would be happy to ask the ministry to come forward, but I assure you that this is happening.

**Mr. Steve Burnett:** Subsequent to the hearing of the standing committee last week, we followed up with our vendor. We did investigate the Peratech solution. They are aware of Peratech. They don't, at this stage, see a commercially viable application of that technology. Their vice-president of global technologies—we were in contact with him—doesn't see that as a viable solution yet. That's consistent with GS1's position, which is that they will develop a prototype and come up with a timeline for a prototype in November. We're certainly interested in working with our vendor, G&D. We wouldn't deal directly with Peratech, we would go through our vendor as part of our contract. We actually think it's a great idea, and if we can make this work, we will be looking for ways to make it happen. But at this point, we can't commit contractually in legislation to doing this until we see something viable.

**Mr. Frank Klees:** Just by way of follow-up, in that case, I'm assuming that the ministry would direct its vendor to work co-operatively, then, with Peratech and GS1 and the privacy commissioner.

**Mr. Steve Burnett:** We would be careful in directing our vendor in R&D development. We would specify requirements that we look for technologies that will enhance the privacy of the enhanced driver's licence. We would be cautious about directing a commercial venture in R&D toward a specific end without knowing about the commercial application of that. But we certainly will work—and they're aware of the work—and will certainly have the requirement that we will enhance the privacy profile, if you will, of the RFID.

**Mr. Frank Klees:** I understand what you can't do, but what you also don't want to have happen is that if in fact there is a technology that would serve our purposes, because a vendor may have another focus, you wouldn't want to miss out on an opportunity to have that technology serve us well. I'm looking for that assurance, and I'm sure that your relationship with your vendor is such that if your request is made in a non-directive sense, but by way of a request in the public interest, they would certainly be willing to work co-operatively with this group.

**Mr. Steve Burnett:** I wouldn't see that being a particular challenge. The main concern we had was the implementation timeline and any expectation that we would implement any new technology by April, which is our timeline. But certainly, as we look at the evolution of the enhanced driver's licence, that will certainly be part of it, absolutely.

**The Chair (Mrs. Linda Jeffrey):** Mr. Mauro.

**Mr. Bill Mauro:** Mr. Burnett, if a card was illegally scanned, what information would that yield to the person who is illegally scanning the card?

**Mr. Steve Burnett:** There are two data fields that we're using on the RFID. There's a tag identification number, which is essentially its serial number, and then there's a product identification number, which is essentially the unique identifier for that card linking it with that serial number.

**Mr. Bill Mauro:** So if I had one of these cards and you illegally scanned me, you would have a serial number that did not identify that number with me by the name Bill Mauro. It would not identify me as to where I lived or anything. You would simply have a serial number on a card.

**Mr. Steve Burnett:** That's correct.

**Mr. Bill Mauro:** So while the on/off technology might be intriguing and interesting going forward, currently the information that someone could gather by illegally scanning that card is a serial number.

**Mr. Steve Burnett:** It would not identify an individual.

**Mr. Bill Mauro:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the new section 11.1? Shall it carry? All in favour? All opposed? That's lost.

11.2 is a PC motion. Mr. Bailey.

1630

**Mr. Robert Bailey:** I move that the bill be amended by adding the following section:

"Disclosure of personal information

"Disclosure agreements, requirement

"11.2(1) Despite subsection 11(2), the minister may only authorize the disclosure of personal information to public bodies, related governments or the government of the United States if,

"(a) there is a disclosure agreement in place with the entity to which the disclosure is to be made that safeguards the personal information; and



“(b) the agreement conforms with guidelines issued by the Office of the Information and Privacy Commissioner.

“Disclosure agreements, contents

“(2) The disclosure agreements may only provide for,

“(a) transferring the minimum amount of personal information or data minimization; and

“(b) monitoring and auditing of compliance.

“Disclosure agreements, public

“(3) The minister shall make the disclosure agreements publicly available.

“Definitions

“(4) In this section,

“‘Government of the United States’ includes the government of any state of the United States and any agency, board, commission or official of the government of the United States or of any state of the United States;

“‘public body’ means a public body as defined in subsection 11(7);

“‘related government’ means a related government as defined in subsection 11(7).”

Our opinion on this is outlined in 3.1.1, subtitled “Accountability” in the Information and Privacy Commissioner’s report, page 10:

“Accountability requires that when personal information is disclosed to others, the public should have the assurance that appropriate agreements will be put in place to protect their privacy and security.

“Under Bill 85, the ministry will have direct responsibility for ensuring the privacy and security of the personal information collected, used and disclosed for the photo card programs.... the ministry should be required by Bill 85 to seek equivalent privacy protection through contractual or other means when disclosing or transferring personal information to third parties. This principle is reflected in section 21, 42 and 65.1 of FIPPA” and in other statutes “but not in Bill 85.”

Ontarians may only have protection and security of their personal information by means of disclosure agreements as noted in the amendments, and this is recorded on page 11 of the Information and Privacy Commissioner’s report.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Michael A. Brown:** Again, there is no intention to disclose personal information to governments outside of Canada. With the exception of disclosures contemplated to the Canada Border Service Agency or Citizenship and Immigration Canada, the disclosures by the minister referred to in section 11 do not lend themselves to agreements dealing with information being disclosed.

For example, disclosures to verify the authenticity of a document or the accuracy of information do not involve significant disclosures of personal information to the recipient organization. With respect to disclosures to the CBSA, the Information and Privacy Commissioner noted before the committee that the ministry is intending to enter into a memorandum of understanding with that organization, for the personal information collected by CBSA and CIC is protected under the federal Privacy

Act. By contrast, the provisions in FIPPA referred to in the IPC’s submission to the committee concerned disclosures of highly sensitive personal health information to auditors or potential successor health information custodians—entities that would not necessarily be expected to have a significant experience in the management of personal information under the statutory framework. So we will not be supporting this amendment.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the new section 11.2? Shall it carry? All those in favour? All those opposed? That’s lost.

The next section is NDP, number 28. Mr. Hampton.

**Mr. Howard Hampton:** I move that the bill be amended by adding the following section:

“Disclosure of information, agreement

“11.2(1) Despite subsection 11(2), the minister may only disclose information to a public body or related government so the information may be used for a purpose set out in subsection 11(4) if the public body or related government first enters into an agreement with the minister to keep the information confidential and secure and to retain the information no longer than is necessary for the purpose set out in subsection 11(4).

“Review of agreement

“(2) Before finalizing an agreement under subsection (1), the minister shall ask the Information and Privacy Commissioner to review the agreement to ensure,

“(a) that it transfers the minimum amount of information that is necessary; and

“(b) that it has sufficient monitoring and compliance oversight provisions.

“Agreements public

“(3) Subject to subsection (4), agreements made under this section shall be made public.

“Exception

“(4) The minister may suppress from the publicly available agreements any confidential clauses, but only to the extent of legitimate security needs.

“Agreements with the Canada Border Services Agency etc.

“(5) If the minister enters into an agreement to share information with the Canada Border Services Agency or the Department of Citizenship and Immigration, the minister shall ensure that the agreement restricts the information subsequently shared by Canadian authorities with United States border authorities to no more than that which is required information taken from a passport.

“Definitions

“(6) In this section,

“‘public body’ means a public body as defined in subsection 11(7);

“‘related government’ means a related government as defined in subsection 11(7).”

Again, this gets at the very specific recommendation of the Information and Privacy Commissioner that, if we’re going to adequately protect people’s information, information should only be disclosed to other government bodies, subject to carefully written agreements.



**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Michael A. Brown:** With the exception of the disclosures contemplated to the Canada Border Services Agency and the Department of Citizenship and Immigration, the disclosures by the ministry you refer to in section 11 do not lend themselves to agreements dealing with the information being disclosed. For example, disclosures to verify the authenticity of a document or the accuracy of the information do not involve significant disclosures of personal information to the recipient organizations. Further, the wide range of receiving organizations involved would make the agreement requirement unduly cumbersome for the ministry to administer.

With respect to disclosures to the CBSA, the Information and Privacy Commissioner noted before the committee that the ministry is intending to enter into an MOU with that organization.

Further, personal information collected by CBSA and CIC is protected under the federal privacy act. By contrast, the provisions in FIPPA referred to in the IPC's submission to the committee concerned disclosures of highly sensitive personal health information to auditors or potential successor health information custodians, entities that would not necessarily be expected to have significant expertise in the management of personal information under a statutory framework.

Data disclosure agreements between the government of Canada and the government of the United States are detailed in a memorandum of understanding executed by these two parties. Agreements between the province and the government of Canada are made in the context of that agreement between the government of Canada and the government of the United States.

Therefore, we will not be supporting this amendment.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

There are no changes to sections 12 through 20. Shall they carry? All those in favour? Those opposed? That's carried.

Next motion. Mr. Bailey.

**Mr. Robert Bailey:** I move that subsection 21(1) of the bill be amended by striking out "the crown in right of Ontario".

Our background on this is that the amendment ensures that the crown in right of Ontario is not immune from liability when Ontarians become victims of government negligence in the handling of their personal information under the various photo card programs. This is referred to in the Information and Privacy Commissioner's report on page 13.

1640

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** I appreciate the amendment. We will not be supporting it, but if you look at our amendment 35, we intend to achieve the same result. So we appreciate the amendment. We find that a little bit

more extensive—it's just a difference in wording, but it essentially achieves the same result. So thank you for the amendment. We won't be supporting this particular one.

**Mr. Robert Bailey:** Anything we can do to help the government.

**Mr. Michael A. Brown:** We appreciate it.

**The Chair (Mrs. Linda Jeffrey):** I'm glad everybody's playing nicely. Any further comments or questions? All those in favour of the motion? All those opposed? That's lost.

The next motion is a duplicate, Mr. Hampton, so I presume you'll withdraw?

**Mr. Howard Hampton:** I withdraw it.

**The Chair (Mrs. Linda Jeffrey):** Thank you.

Next motion. Mr. Bailey.

**Mr. Robert Bailey:** I move that subsection 21(2) be struck out and the following substituted:

"Same

"(2) No action or other proceeding for damages shall be instituted against the minister, the registrar of motor vehicles, a public servant, a delegate or agent of the minister or any other person for doing anything in good faith that is authorized or required to be done under this act arising from the use of a photo card or of any photograph or information on a photo card or in a record kept by the ministry under this act."

Our background on this is, as set out in the Information and Privacy Commissioner's report on page 13, this section should be amended to include a standard of good faith for the immunity to be effective as contained in subsection 21(1).

**The Chair (Mrs. Linda Jeffrey):** Further comments? Mr. Brown.

**Mr. Michael A. Brown:** We do not believe this amendment to be appropriate because the use of the card or a record provided by the minister under the act, once it is issued, is beyond the control of the crown. The good-faith requirement with respect to the performance of a power or duty under the act by a public servant, the registrar or the minister with respect to the protection from liability is already dealt with in subsection 21(1), so it is unnecessary to include it here. We will not be supporting this amendment.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Mr. Hampton, I deem the next one to be a duplicate.

**Mr. Howard Hampton:** I withdraw it.

**The Chair (Mrs. Linda Jeffrey):** Thank you.

Next motion. Mr. Bailey.

**Mr. Robert Bailey:** I move that section 21 be amended by adding the following subsection:

"Crown not relieved of liability

"(3) Despite subsections 5(2) and (4) of the Proceedings Against the Crown Act, subsections (1) and (2) do not relieve the crown of liability in respect of a tort committed by a person mentioned in subsection (1) or (2) to which it would otherwise be subject."



Our opinion on this is that, as set out on page 13 of the Information and Privacy Commissioner's report, the immunity to the government is drafted too broadly in Bill 85 and does not provide appropriate protection for Ontarians who become the victims of government negligence in the handling of their personal information under the various photo card programs. This amendment would remedy that.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Mr. Brown?

**Mr. Michael A. Brown:** The government motion achieves the same result. There's no need to proceed with this motion. The government motion made more robust amendments to section 21, which include permitting recovery against the crown.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Mr. Hampton, the next motion is a duplicate.

**Mr. Howard Hampton:** I withdraw it.

**The Chair (Mrs. Linda Jeffrey):** Thank you.

Next motion. Mr. Brown.

**Mr. Michael A. Brown:** I move that section 21 of the bill be struck out and the following substituted:

"Protection from liability

"21(1) No action or other proceeding for damages shall be instituted against the minister, the registrar of motor vehicles, a public servant, a delegate or agent of the minister or any other person authorized or required to do anything under this act for anything done in good faith in the performance or intended performance of a duty under this act or in the exercise or intended exercise of a power under this act or any neglect or default in the performance or exercise in good faith of such duty or power.

"Same

"(2) No action or other proceeding for damages shall be instituted against the crown in right of Ontario, the minister, the registrar of motor vehicles, a public servant, a delegate or agent of the minister or any other person authorized or required to do anything under this act arising from,

"(a) the use by any person of a photo card;

"(b) the use by any person of any photograph or information on a photo card; or

"(c) the use by any person of any photograph or information in a record provided by the ministry under this act.

"Crown liability

"(3) Despite subsections 5(2) and (4) of the Proceedings Against the Crown Act, subsection (1) does not relieve the crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject."

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** This amendment to subsection (1) and the inclusion of subsection (3) allow an innocent person to seek from the crown recovery of his

or her damages suffered if they occur as a result of the good faith performance of a power or duty of a public servant, the minister or registrar under this act.

The amendment to subsection (2) clarifies the types of uses by persons of the photo card information in a record provided by the crown for which it is protected. The crown is protected from liability in this subsection, because the use of the card or a record provided by the minister under this act, once it is issued, is beyond the control of the crown.

The good faith requirement with respect to the performance of a power or duty under the act by a public servant, the registrar or the minister with respect to protection from liability is already dealt with in subsection (1), so it is unnecessary to include it in this section. As well, applying a good faith requirement with respect to uses of this card that are beyond the control of the crown isn't appropriate.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Frank Klees:** By way of information, could the parliamentary assistant or staff provide us with information as to what contractual consequences are there if in fact the vendor has responsibility for implementing this card, if in fact the vendor is found to be negligent in terms of the handling of this information?

**Mr. Michael A. Brown:** I will look for some assistance here.

**The Chair (Mrs. Linda Jeffrey):** State your name, please.

**Mr. Steve Burnett:** Steve Burnett, Ministry of Transportation. Chair, we'll have to come back with further clarification on this item, look at the contract specifically and come back with language.

**Mr. Frank Klees:** Okay. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, shall this motion carry? All in favour? All opposed? That's carried.

Shall section 21, as amended, carry? All those in favour? All those opposed? That's carried.

Next, section 21.1. Mr. Hampton.

**Mr. Howard Hampton:** I move that the bill be amended by adding the following section:

"Independent economic analysis

"21.1(1) The minister shall ensure that, before the end of the phasing-in period,

"(a) an independent third party undertakes an economic analysis of the enhanced photo card and the combined photo card to evaluate their costs and benefits; and

"(b) that the third party prepare a report on their findings.

"Report to be public

"(2) The minister shall make the report referred to in subsection (1) available to the public and shall do so before the end of the phasing-in period."

If I may, the rationale for this is, the committee heard from Andrew Clement, a professor at the University of Toronto's faculty of information. This was his specific recommendation: that it would require that an inde-



pendent third party examine the economic cost benefits of the photo card before we proceed with what will likely be a multi-million dollar venture.

**The Acting Chair (Mr. Bas Balkissoon):** Any debate, questions and comments?

**Mr. Michael A. Brown:** As all members know, the ministry is already fully accountable through public accounts and the Provincial Auditor. This would be redundant.

1650

**The Acting Chair (Mr. Bas Balkissoon):** Further debate? All those in favour of the motion? Against? It does not carry.

Mr. Hampton.

**Mr. Howard Hampton:** I move that the bill be amended by adding the following section:

"Tabling of full financial costs

"21.2 The minister shall table with the Legislature the full financial costs incurred by the development and implementation of the photo card before the end of the phasing-in period."

**The Acting Chair (Mr. Bas Balkissoon):** Any debate?

**Mr. Michael A. Brown:** We will not be supporting it because, again, this is redundant. This information will be in the public accounts and subject to the Provincial Auditor.

**The Acting Chair (Mr. Bas Balkissoon):** Further debate? All in favour? Against? The motion is lost.

Number 38. Mr. Hampton.

**Mr. Howard Hampton:** I move that the bill be amended by adding the following section:

"Cards made in Ontario

"21.3 All photo cards shall be made in Ontario."

**The Acting Chair (Mr. Bas Balkissoon):** Any debate?

**Mr. Michael A. Brown:** This is totally consistent with the current practice. Legislation, however, would be contrary to agreement in internal trade, which prohibits geographic restrictions when procuring services. It would exclude vendors from future rounds of procurement. I would, however, note that the MTO is now in the second year of a 10-year contract with a Markham-based vendor. The contract will obviously then expire in 2017.

**The Acting Chair (Mr. Bas Balkissoon):** Further debate? All in favour? Against? The motion fails.

**The Chair (Mrs. Linda Jeffrey):** Section 22. Mr. Brown.

**Mr. Michael A. Brown:** We will withdraw the amendment.

**The Chair (Mrs. Linda Jeffrey):** You're going to withdraw. Okay.

Shall section 22 carry? All those in favour? All those opposed? It's carried.

Next section, a new section. Mr. Bailey.

**Mr. Robert Bailey:** I move that the bill be amended by adding the following section:

"Regulations, limitations

"22.1 (1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under section 22 unless,

"(a) the minister has published a notice of the proposed regulation in the Ontario Gazette and given notice of the proposed regulation by all other means that the minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;

"(b) the notice complies with the requirements of this section;

"(c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2)(b) or (c), have expired; and

"(d) the minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2)(b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the minister considers appropriate.

"Content of notice

"(2) The notice mentioned in clause (1)(a) shall contain:

"(a) a description of the proposed regulation and the text of it;

"(b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the minister and the manner in which and the address to which the comments must be submitted;

"(c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;

"(d) a statement of where and when members of the public may review written information about the proposed regulations;

"(e) all prescribed information; and

"(f) all other information that the minister considers appropriate.

"Minimum notice period

"(3) The time period mentioned in clauses (2)(b) and (c) shall be at least 60 days after the minister gives the notice mentioned in clause (1)(a) unless the minister shortens the time period in accordance with subsection (4).

"Shortened notice period

"(4) The minister may shorten the time period if, in the minister's opinion, the urgency of the situation requires it.

"Making proposed regulation

"(5) Upon receiving the minister's report mentioned in clause (1)(d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the minister's report.

"Exception, urgent situation



“(6) The minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 22 if, in the minister’s opinion, the urgency of the situation requires it.

“Same

“If the minister decides that subsections (1) to (5)”—

**The Chair (Mrs. Linda Jeffrey):** Mr. Bailey, could you—

**Mr. Robert Bailey:** Sorry?

**The Chair (Mrs. Linda Jeffrey):** Just going back to “Same”—you missed the number.

**Mr. Robert Bailey:** Oh, sorry.

“Same

“(7) If the minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 22,

“(a) subsections (1) to (5) do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

“(b) The minister shall give notice of the decision to the public and to the Information and Privacy Commissioner as soon as is reasonably possible after making the decision.

“Content of notice

“(8) The notice mentioned in clause (7)(b) shall include a statement of the minister’s reasons for making the decision and all other information that the minister considers appropriate.

“Publishing of notice

“(9) The minister shall publish the notice mentioned in clause (7)(b) in the Ontario Gazette and give the notice by all other means that the minister considers appropriate.

“Limitation

“(10) If the minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 22 because the minister is of the opinion that the urgency of the situation requires it, the regulation shall,

“(a) be identified as a temporary regulation in the text of the regulation; and

“(b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force.”

This is from recommendation 10 of the Information and Privacy Commissioner’s report, on page 14, and amends Bill 85 to provide for public consultation before regulations are enacted: “Openness and transparency are key to government accountability, especially when the government serves as custodian of a significant amount of personal information on its citizens. Bill 85 leaves crucial matters affecting the privacy and security of Ontarians either to the discretion of government officials or to be later prescribed by regulation, without any requirement for public notice or comment”; for example, the information to be contained on this photo card, the security features on a photo card that may allow it to be

used for travel, and the contents of information-sharing agreements. This is indicated in the Information and Privacy Commissioner’s report on page 13, in the last paragraph.

Madam Chair, “for transparency and accountability to be achieved, the regulation-making powers in Bill 85 must allow for public consultation before a regulation is enacted.” This amendment outlines a process for enacting that public consultation. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Michael A. Brown:** Congratulations.

*Interjection.*

**Mr. Michael A. Brown:** The ministry generally consults, during the passing of regulations, and the ministry will commit to using the regulatory registry and post a general overview of the proposed photo card regulations on the Internet site, and will receive public comments.

We believe that to be the appropriate way to proceed. Therefore, we will not be supporting Mr. Bailey’s amendment.

**Mr. Robert Bailey:** After all that.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Frank Klees:** I want to thank my colleague Mr. Bailey—

**Mr. Robert Bailey:** I drew the short straw.

1700

**Mr. Frank Klees:** —for doing all the heavy lifting on this committee today.

In seriousness, what is proposed under this amendment is, I believe, what every citizen of this province would expect that the process involves in any event, and it’s simply a matter of ensuring that the regulations that are implemented under this bill are properly vetted and that there is transparency. For that reason, I fail to understand why the government would turn this down.

We’re getting to the end of our amendments. There’s a trend developing here.

**Mr. Howard Hampton:** Developing?

**Mr. Frank Klees:** Not one PC amendment and only one NDP amendment has been accepted by the government, and we are starting to feel rather redundant in this process. Having said that, I’d like to give the parliamentary assistant one last opportunity to show leadership and give some direction to his colleagues to accept this amendment.

**The Chair (Mrs. Linda Jeffrey):** Mr. Brown.

**Mr. Michael A. Brown:** Thank you. I appreciate the opportunity. I will reiterate that the government is serious about having a conversation about these regulations and will consult widely. We will post them on the Internet site; people will be able to let the government and the ministry know of their feelings about the regulations as they’re put forward. We believe we have an open and transparent system to make sure that the public is able to comment on the regulatory process.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?



**Mr. Frank Klees:** I guess that's a no.

**The Chair (Mrs. Linda Jeffrey):** Seeing none, shall the new section carry? All those in favour? All those opposed? That's lost.

Mr. Hampton, I believe the next section is a duplicate that you're proposing.

**Mr. Howard Hampton:** I think the commas are different. We'll withdraw.

**The Chair (Mrs. Linda Jeffrey):** Thank you. That's withdrawn.

Sections 23 through 26 have no amendments. Shall they carry? All those in favour? All those opposed? Carried.

Section 27. Mr. Brown.

**Mr. Michael A. Brown:** We will withdraw this amendment.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Shall section 27 carry? All those in favour? All those opposed? That's carried.

Sections 28 through 43 have no amendments. Shall they carry? All those in favour? All those opposed? Carried.

We have a government amendment, and it's also a different amendment from what's in your book currently; 43 has a replacement. It's the last of the three that you had put on your desk.

Section 44.

**Mr. Michael A. Brown:** I move that section 205.0.1 of the Highway Traffic Act, as set out in section 44 of the bill, be amended by adding the following subsection:

"Exception

"(3.1) The minister may not disclose under subsection (2) the measurements used for comparison of photographs as described in section 32.2."

The amendment takes into account the concerns raised during public hearings about the disclosure of biometric information. This amendment would prevent sharing the biometric template that the photo comparison technology produces. I want to thank all members for making this point in a number of amendments earlier on.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Howard Hampton:** We'd be interested in having the Information and Privacy Commissioner appear before the committee to comment on whether this amendment has gone far enough and whether, for example, the use of the term "measurement" will impose tough enough restrictions on the sharing of biometric information.

**The Chair (Mrs. Linda Jeffrey):** Mr. Brown.

**Mr. Michael A. Brown:** Well, we're in clause-by-clause at the moment. We are here to make decisions, and we intend to go forward at this point. I should point out, though, that when the Information and Privacy Commissioner was here before us, one of the things she noted was that she had had an ongoing dialogue with the ministry about these issues, as we went forward, and intends to continue to have what she described—I'm not quoting her but I think the gist of this is correct—as a productive and interesting exchange with the ministry as

we try to sort out these very difficult privacy issues. We in the ministry can commit to continue doing that.

**The Chair (Mrs. Linda Jeffrey):** Mr. Klees.

**Mr. Frank Klees:** The parliamentary assistant correctly states that the privacy commissioner has had ongoing dialogue with the ministry, and the minister stated that he would listen to the privacy commissioner. What's very clear, however, is that that's all it was, a conversation with the ministry, because almost every amendment that has been put forward, either by the PC caucus or the NDP caucus, has come directly from the privacy commissioner, addressing her concerns. We're down to the wire here. The record will show that none of these amendments has been accepted. So our concern is that while on the one hand there is this conversation going on, no one is listening, or the government isn't listening. So to Mr. Hampton's request I would say this: It's predictable, obviously, that the government won't have the privacy commissioner appear before this committee, but what I would ask is that at the very least we ask that the privacy commissioner be asked to provide her opinion in writing, and that that opinion be distributed to members of this committee at the earliest possible time so that we at least have that information in time for third reading debate in the Legislature.

**The Chair (Mrs. Linda Jeffrey):** Mr. Klees, we have to deal with the motion that's before us on the floor right now. If at some point you want to bring that forward after we've dealt with this motion, then I can consider it, but right now I have to deal with what's on the floor.

**Mr. Frank Klees:** We're in your hands.

**The Chair (Mrs. Linda Jeffrey):** Any further comments on the motion that's on the floor? Seeing none, all those in favour of the motion? All those opposed? It's lost.

**Mr. Frank Klees:** If I might—is this an appropriate time?

**The Chair (Mrs. Linda Jeffrey):** Yes.

**Mr. Frank Klees:** I'd like to make my request by way of a motion to ask that the privacy commissioner be asked to submit her opinion in writing as to whether or not the government's amendment addressed her concern.

**The Chair (Mrs. Linda Jeffrey):** I'm sorry, Mr. Klees, I was distracted. Could you repeat what you just said? You were making a request for—

**Mr. Frank Klees:** I was. By way of a formal motion, I was making the request that the privacy commissioner—

**Mr. Howard Hampton:** You guys got confused.

**Mr. Bill Mauro:** So did you guys.

**Mr. Frank Klees:** No, we knew what we were doing.

**The Chair (Mrs. Linda Jeffrey):** Can I get a little order?

**Interjection:** We thought we were voting on the motion to bring the privacy commissioner here.

**The Chair (Mrs. Linda Jeffrey):** No. You were voting on your own government motion, which lost. Now you're listening to Mr. Klees, who is bringing forward another recommendation.



*Interjections.*

**The Chair (Mrs. Linda Jeffrey):** No, I made that very clear. We were only voting on the motion that was on the floor and that I would consider Mr. Klees's motion following that. So right now you're listening to Mr. Klees's motion to ask the commissioner to come back, I believe. Could you repeat that?

**Mr. Frank Klees:** I would ask that the privacy commissioner be asked to provide a written opinion as to whether or not the government's amendment meets her requirements, as stated by the parliamentary assistant.

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**The Chair (Mrs. Linda Jeffrey):** Okay. Any comments or questions on the motion that's on the floor?

**Mr. Michael A. Brown:** Sorry, there was a little bit of chatter. I didn't hear the—

**The Chair (Mrs. Linda Jeffrey):** Could I ask committee to stop the side chatter? We have a motion on the floor that we don't have written, so you're going to have to listen to the motion.

**Mr. Frank Klees:** Parliamentary Assistant, government members turned down Mr. Hampton's request that the privacy commissioner be brought back to provide her opinion as to whether the government's amendment that deals with the issue before us adequately addresses her concerns.

My motion, that I'm sure the clerk has, says failing that, that we at least ask the privacy commissioner to provide her opinion in writing and that it be distributed to all members of the committee.

**The Chair (Mrs. Linda Jeffrey):** Mr. Brown?

**Mr. Frank Klees:** Surely you don't have any objection—

**Mr. Michael A. Brown:** Maybe the Chair could help me a little bit. I don't believe we did defeat Mr. Hampton's motion, because I don't believe he made one.

**Mr. Frank Klees:** It wasn't a motion. It was a request.

**Mr. Michael A. Brown:** Well, you just said it was a motion.

**The Chair (Mrs. Linda Jeffrey):** I'm sorry, what motion are you talking about?

**Mr. Michael A. Brown:** I'm trying to know what's going on here, just from a procedural point of view.

**The Chair (Mrs. Linda Jeffrey):** Can I just clarify for a minute? I'm trying to understand what the question is. Are you asking about something that's just happened or in the past?

**Mr. Michael A. Brown:** Mr. Klees said we defeated Mr. Hampton's motion, which I don't believe happened.

**The Chair (Mrs. Linda Jeffrey):** No, that wasn't a motion. It was a government motion on the floor. Mr. Klees asked for something else. I told him we couldn't deal with that issue. We dealt with the government motion which was on the floor, which was defeated.

**Mr. Michael A. Brown:** Right.

**The Chair (Mrs. Linda Jeffrey):** So now we're at the point where Mr. Klees has asked for the commissioner to

come back. There's discussion on that item. That's what's on the floor. Okay?

**Mr. Michael A. Brown:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Any other clarification that's necessary?

**Mr. Frank Klees:** I'd like to clarify.

**The Chair (Mrs. Linda Jeffrey):** Mr. Klees, to clarify.

**Mr. Frank Klees:** I am not asking that the commissioner come back. I am asking for a written opinion—

**The Chair (Mrs. Linda Jeffrey):** A written report. I apologize.

**Mr. Frank Klees:** —a written comment from the privacy commissioner.

**The Chair (Mrs. Linda Jeffrey):** Okay. On which amendment?

**Mr. Howard Hampton:** In this case, it would be a written commentary from the privacy commissioner as to whether or not the failed government amendment adequately protects biometric information.

**Mr. Frank Klees:** That's very good. That's right.

**The Chair (Mrs. Linda Jeffrey):** Mr. Klees, could you clarify that that is your intent?

**Mr. Frank Klees:** That is my intent.

**The Chair (Mrs. Linda Jeffrey):** Can you clarify which amendment it would be?

**Mr. Frank Klees:** That would have been government motion—

**The Chair (Mrs. Linda Jeffrey):** Is that 43R?

**Mr. Frank Klees:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Okay. Any more discussion on that motion?

**Mr. Frank Klees:** For further clarification, if I might, that is the government motion that government members defeated.

*Interjections.*

**The Chair (Mrs. Linda Jeffrey):** Any further conversation or comment on this? Any further conversation?

**Mr. Michael A. Brown:** I think, seeing as we're asking for the commissioner to come to speak to an amendment—

**Mr. Bas Balkissoon:** Point of order.

**The Chair (Mrs. Linda Jeffrey):** Can I just interrupt for a second? Mr. Balkissoon is asking about a point of order.

**Mr. Bas Balkissoon:** On motion 43, when you took the vote, I voted to support the motion along with these three, so it's a tied vote.

**Interjection:** No, no.

**Mr. Bas Balkissoon:** Yes, I did. My hand was up.

**Interjection:** Yes, he did.

**Mr. Bas Balkissoon:** Because I looked at these guys and I wondered what was wrong with them. It was a tied vote.

**The Chair (Mrs. Linda Jeffrey):** I understand that people would like to go back and revisit that. I ruled that it lost. On my visual inspection of the number of hands in the room, I—



**Mr. Bas Balkissoon:** And I immediately asked my colleague here, "What happened?" I voted when they voted "yes."

**Mr. Frank Klees:** It's another historic event.

**Mrs. Carol Mitchell:** We appreciate the support.

**The Chair (Mrs. Linda Jeffrey):** Mr. Balkissoon, just as a clarification: If it was a tied vote, I couldn't break the tie anyway. Back to Mr. Brown.

**Mr. Michael A. Brown:** Thank you. To Mr. Klees: He's asking for the privacy commissioner to come and speak to—

**Mr. Frank Klees:** No.

**Mr. Michael A. Brown:** No?

**The Chair (Mrs. Linda Jeffrey):** No. I think what he's asking for is a report.

**Mr. Frank Klees:** Just a written—

**The Chair (Mrs. Linda Jeffrey):** A written report.

**Mr. Michael A. Brown:** A written report?

**Mr. Frank Klees:** Just a written comment.

**Mr. Michael A. Brown:** I think you can do that yourself. I don't think you need the committee to ask the privacy commissioner to provide us with a written report.

I know this is dangerous ground here, but I would like to ask for unanimous consent that we go back and revisit the section, because—

*Interjections.*

**Mr. Michael A. Brown:** Just listen to me for a second.

**The Chair (Mrs. Linda Jeffrey):** Mr. Brown, before you begin, I have to deal with what's on the floor first. I had the problem before. I need to deal with Mr. Klees's motion first and when his motion is finished, if you want to come back for unanimous consent, you can.

The motion we have right now on the floor is Mr. Klees's motion that the privacy commissioner write a written report the implications of 43R. Have I got that right?

**Mr. Frank Klees:** That's right.

**The Chair (Mrs. Linda Jeffrey):** Okay, so that's what's on the floor. Any discussion on that motion? Seeing none, all those in favour? That's carried.

Now, Mr. Brown, would you like to—

**Mr. Michael A. Brown:** I would like unanimous consent for us to revert to section 44 of the bill, the amendment—

**The Chair (Mrs. Linda Jeffrey):** You're still in 44.

**Mr. Michael A. Brown:** —my amendment number 43R.

**Mr. Howard Hampton:** Now 43RR.

**Mr. Michael A. Brown:** Squared, maybe. If we could just go back, with the consent of the committee, to revote.

**The Chair (Mrs. Linda Jeffrey):** Mr. Brown has asked for unanimous consent to revisit 43R. Do we have unanimous consent?

**Mr. Frank Klees:** I think I can speak to this, right?

**The Chair (Mrs. Linda Jeffrey):** Mr. Klees.

**Mr. Frank Klees:** I would ask that the parliamentary assistant or staff explain what will happen and what the implications are if he doesn't get unanimous consent.

**Mr. Michael A. Brown:** If we do not get unanimous consent, the vote stands. That's what happens.

**Mr. Frank Klees:** But there are implications to the legislation, and I think—

**The Chair (Mrs. Linda Jeffrey):** Mr. Klees, we're trying to have some clarification as to whether we can do what is being asked, from a procedural point of view.

**Mrs. Carol Mitchell:** I just want to ask: If this does not pass, how then could the previous motion be dealt with?

**The Chair (Mrs. Linda Jeffrey):** I guess we'll have to get to the end of the section, and I presume that the commissioner could comment on the bill as a whole if she felt there was a need. I think we're splitting hairs, at this point.

**Mrs. Carol Mitchell:** Did it speak specifically, though, to that amendment?

**The Chair (Mrs. Linda Jeffrey):** Yes, it did speak specifically, so if the motion isn't considered again, I guess—

**Mrs. Carol Mitchell:** I'm just trying to rally support.

**The Chair (Mrs. Linda Jeffrey):** I understand you're trying to be helpful.

I guess the answer to the question is that I still need unanimous consent before we can get to the debate of this bill. Do we have unanimous consent to reopen 43R?

**Mr. Frank Klees:** Could I perhaps ask: If we give unanimous consent to this, is the government willing to give us unanimous consent to revisit a couple of our amendments that we think are ultimately important? I see the parliamentary assistant saying no.

**Mr. Bas Balkissoon:** Just to revisit.

**Mr. Frank Klees:** Well, in the spirit, which obviously is difficult for government members to find, I'm willing to agree to unanimous consent.

**The Chair (Mrs. Linda Jeffrey):** Mr. Hampton?

**Mr. Howard Hampton:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Okay, thank you. We have unanimous consent to reopen the decision on 43R. The motion before us is 43R. All those in favour of that motion? All those opposed? That's carried.

Now we're at 44. Mr. Bailey, are you capable of reading this one?

**Mr. Robert Bailey:** Yes, I certainly am, Madam Chair.

I move that subsection 205.0.1(4) of the Highway Traffic Act, as enacted by section 44 of the bill, be amended by striking out paragraph 6.

Madam Chair, what this will accomplish is recommendation 14 of the Information and Privacy Commissioner's report on page 21:

"Combined with the wide definition of 'related government' and 'public body' and the lack of definitions for the terms 'information' and 'biometric information,' Bill 85"—as currently written—"allows for the possibility that all personal information, including an individual's



biometric, driving history, citizenship data, etc., could be shared without restriction.... Individuals do not reasonably expect that when applying for a library card, the provincial government will disclose their biometric, citizenship information, or other information to the library." Paragraph four, page 21, of the privacy commissioner's report.

"Another challenge to the principle that purposes should be limited and relevant to the circumstances is the proposed amendments in to the Highway Traffic Act regarding driver's licences and vehicle permits at s. 44 of Bill 85. It is clear that the ministry wishes to implement a border crossing document and that it is attempting to obtain authority to do so in Bill 85. However, the bill contains virtually identical provisions to amend the Highway Traffic Act and will allow the same broad collection and disclosure of personal information regarding driver's licences and vehicle permits. Such broad collection and disclosure powers are for a completely different purpose not related to the original purposes described above." This is from paragraph five, page 21 of that report.

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**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** I'd first point out to the member that this is a voluntary card, and the disclosure under this provision is limited to purposes such as verifying the accuracy of information, detecting false statements, authenticating documents and preventing improper use of driver's licences or vehicle permits, and only where a driver's licence or a vehicle permit has been presented to the public body or related government in order to obtain a benefit or a service. This provision allows the minister to support anti-fraud measures of other governmental entities and should be kept in the bill.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of motion? All those opposed? That's lost.

Mr. Hampton, I think 45 is a duplicate.

**Mr. Howard Hampton:** Withdraw.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Next motion?

**Mr. Robert Bailey:** I move that subsection 205.0.1(5) of the Highway Traffic Act, as enacted by section 44 of the bill, be struck out and the following substituted:

"Disclosure of personal information

"(5) The minister shall not disclose personal information in his or her custody or under its control except,

"(a) in accordance with part I of the Municipal Freedom of Information and Protection of Privacy Act;

"(b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

"(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

"(d) if the disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and if the

disclosure is necessary and proper in the discharge of the institution's functions;

"(e) for the purpose of complying with an act of the Legislature or an act of Parliament, an agreement or arrangement under such an act or a treaty;

"(f) if disclosure is by a law enforcement institution,

"(i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or

"(ii) to another law enforcement agency in Canada;

"(g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

"(h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;

"(i) in compassionate circumstances, to facilitate contact with the spouse, a close relative or a friend of an individual who is injured, ill or deceased;

"(j) to the minister;

"(k) to the Information and Privacy Commissioner; or

"(l) to the government of Canada or the government of Ontario in order to facilitate the auditing of shared-cost programs."

As set out on page 12 the Information and Privacy Commissioner's Report under "Deemed compliance provisions," this amendment applies section 32 of the Municipal Freedom of Information and Protection of Privacy Act to Bill 85, to enhance the protection of the privacy rights of individuals and to allow them to exercise that control over the disclosure of their personal information by government institutions.

The Municipal Freedom of Information and Protection of Privacy Act states "that an institution shall not disclose personal information except for the purpose of complying with an act of the Legislature or an act of Parliament or a treaty, agreement or arrangement thereunder. Bill 85 exempts disclosures by and to the ministry from this requirement. In doing so, the ministry will be able to disclose information without the safeguard of an agreement."

This is "inconsistent with section 43 of FIPPA and section 33 of MFIPPA, which state that personal information can only be used or disclosed for a consistent purpose if the individual might reasonably have expected such a use or disclosure. Canadian citizens in Ontario, who provide their personal information to the ministry for the purposes of expediting border crossing cannot reasonably expect all the unspecified uses and disclosures that may occur pursuant to Bill 85."

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** Subsection 205.0.1(5) is not unique in Ontario legislation. Similar provisions exist in a number of other statutes: the Regulatory Modernization Act, Christopher's Law, the Ministry of Correctional



Services Act, the Occupational Health and Safety Act, the Police Services Act, the Vital Statistics Act, the Land Titles Act, the Employment Standards Act, the Financial Administration Act. The purpose of this subsection is to protect the minister's disclosure of personal information under 205.0.1(2) from being the subject of a privacy complaint made to the Information and Privacy Commissioner.

Paragraph 42(1)(e) of the Freedom of Information and Protection of Privacy Act reads as follows: "An institution shall not disclose personal information in its custody or under its control except ... for the purpose of complying with an act of the Legislature or an act of Parliament or a treaty, agreement or arrangement thereunder."

The minister is given permissive authority under 205.0.1(2) to disclose information, including personal information. The Information and Privacy Commissioner has held that a permissive authority such as that provided under subsection 205.0.1(2) does not satisfy the requirements of subsection 42(1)(e) of FIPPA, under which disclosure can only be made where the institution disclosing the information is required by the relevant-to-disclose personal information.

It is also possible and likely that the minister's disclosure under this section will fall under the FIPPA disclosure authority such as FIPPA's 42(1)(c)—disclosure for the purpose for which information was collected for a consistent purpose—but this may not always be the case. So it is recommended that this subsection remain as is.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Mr. Hampton: number 47.

**Mr. Howard Hampton:** I move that subsection 205.0.1(5) of the Highway Traffic Act, as enacted by section 44 of the bill, be struck out.

I think the reasons are obvious. We agree with the Information and Privacy Commissioner. We disagree with the government.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Michael A. Brown:** And the government's response would be similar to the response I just gave.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Mr. Bailey.

**Mr. Robert Bailey:** I move that section 205.0.1 of the Highway Traffic Act, as enacted by section 44 of the bill, be amended by adding the following subsection:

"Limitation on collection etc. of information

"(5.1) The collection, use or disclosure of information under this section shall be limited to the purposes specified in the section."

This amendment defines the limited purpose for which personal information can be collected, used or disclosed as set forth on page 25 of the Information and Privacy Commissioner's report.

Bill 85 does not limit the use and disclosure of personal information to the purpose for which the information was collected. It allows any public body to decide subjectively what information may assist the minister and disclose it to him or her. It also allows the ministry to disclose to any public body or related government any information the ministry considers appropriate and subjectively believes necessary to assist them.

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**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Michael A. Brown:** The collection and disclosure is already limited to the purposes set out under subsection 205.0.1(4). It also includes the pre-existing collection and disclosure authority example as provided by the Freedom of Information and Protection of Privacy Act preserved by subsection 205.0.1(6). The purposes for which information can be used would track the purposes for which it can be collected and disclosed. Therefore, we will not be supporting this amendment.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

A government motion: Mr. Brown?

**Mr. Michael A. Brown:** I move that section 205.0.1 of the Highway Traffic Act, as set out in section 44 of the bill, be amended by adding the following subsection:

"Notice under privacy legislation

"(5.1) Any collection by a public body of personal information, as defined in the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act, disclosed to the public body under this section is exempt from the application of subsection 39(2) of the Freedom of Information and Protection of Privacy Act and subsection 29(2) of the Municipal Freedom of Information and Protection of Privacy Act."

This, of course, is just a technical amendment to deal with the fact that provincial privacy legislation requires that a notice of collection be given, even in the circumstances where personal information is collected indirectly by a public body in question. Public bodies to which the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act apply and that collect personal information under this provision could be vulnerable to privacy complaints if they do not give notice of collection, so it is recommended they be exempt from this notice requirement.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Bailey, are you doing the next motion?

**Mr. Robert Bailey:** Mr. Klees.

**The Chair (Mrs. Linda Jeffrey):** Mr. Klees, all right. Heavy lifting.

**Mr. Frank Klees:** I'm the cleanup hitter here.

**The Chair (Mrs. Linda Jeffrey):** Number 50.



**Mr. Frank Klees:** I move that section 205.0.1 of the Highway Traffic Act be amended by adding the following subsection:

“Use and disclosure of personal information, limitation

“(6.1) The use and disclosure of personal information by the minister and by public bodies and related governments under this section shall be limited to what is objectively necessary to establish a person’s eligibility for a driver’s licence or vehicle permit.”

As set out on page 26 of the privacy commissioner’s report, 3.4.2, this pertains to Bill 85’s complementary amendment of part XIV of the Highway Traffic Act to permit a wide variety of collections and disclosure of information by the ministry to and from a related government and public body, which is very widely defined and allows for disclosure to unspecified persons and entities. We’ve repeated this concern over the course of this day. We would ask one more time if the government would agree to consider limiting this very broad authority of Bill 85. That broad authority, together with the deeming provision that we continue to hear, could allow disclosures to entities that were not intended. This is simply for the protection of Ontario citizens and their privacy.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Michael A. Brown:** The bill already restricts the minister’s disclosure authority to what the minister considers to be necessary for the listed purposes, and that of public bodies is limited to that which the public body believes would assist the minister for these purposes. Accordingly, the disclosure authority in this section is limited in the sense that it is subject to the standard of reasonableness, and what is reasonable would be determined within the framework of the purposes set out in subsection 205.0.1(4) and the specific facts of the particular situation. Further, limiting the use and disclosure to the purpose of establishing eligibility for a driver’s licence or vehicle permit is more restrictive than what is provided under the Freedom of Information and Protection of Privacy Act, section 42. Public bodies should not be made to guess whether their compliance with the duty imposed by the act would cause them subsequent difficulty if a privacy complaint is made in respect of their disclosure to the minister. Therefore, we will not be supporting the member’s amendment.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Frank Klees:** Madam Chair, I have to believe that the reason the parliamentary assistant is resisting this amendment is because he’s still struggling with the definition of “objectively necessary.” Perhaps as a final attempt here, I would ask if ministry staff counsel, specifically who is familiar with these legal terms, could provide us with his definition of “objectively necessary”: first of all, whether he is familiar with the term, and if so, what in the vernacular that term means.

**The Chair (Mrs. Linda Jeffrey):** I don’t know that we’re going to be able to do that right now. Is the staff ready?

**Mr. Frank Klees:** Actually, I’m asking for that now because it’s very important to this amendment.

**The Chair (Mrs. Linda Jeffrey):** Okay, we’ll have somebody up. If you could identify yourself.

**Mr. Todd Milton:** Todd Milton, Ministry of Transportation counsel. My understanding I think would be that it’s what was referred to earlier, the reasonable person test as to what is objectively necessary. If a third party were to be adjudicating it, they would try to determine it on that basis. That’s my understanding.

**Mr. Frank Klees:** So could you be more specific, for the benefit especially of Mr. Brown? “Objectively necessary” as opposed to “subjectively necessary” in the context that the privacy commissioner uses those terms—what would differentiate something that is objectively necessary from something being subjectively necessary?

**Mr. Todd Milton:** Well, in the wording here, I think that the minister has discretion, but I think it’s a structured discretion as to what is necessary for those purposes. That’s why we think that it would be subject to a reasonableness standard. I’m talking about the reasonableness of the minister’s discretion, not the reasonable person standard that was referred to earlier. We view it as a structured discretion for the minister, so we would think that there are limitations on that discretion.

**Mr. Frank Klees:** So I’ll take one more attempt at this. Your definition of the term “objectively necessary” would be what?

**Mr. Todd Milton:** As I say, in the context of a dispute over it, if someone were to be adjudicating the dispute, I think that the person attempting to settle the dispute would basically try to arrive at what most people would think would be objectively necessary under the circumstances.

**Mr. Frank Klees:** Thank you very much. Does that help, Mr. Brown?

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Frank Klees:** I was hoping that with that explanation, Mr. Brown would—

**The Chair (Mrs. Linda Jeffrey):** He was going to have a revelation?

**Mr. Frank Klees:** —see clear to support this amendment.

**The Chair (Mrs. Linda Jeffrey):** I haven’t seen any signal that anybody else wants to add any more questions or comments on this motion. Seeing none, all those in favour of the motion? All those opposed? That’s lost.

**Mr. Frank Klees:** I can’t believe it. Could I make a request?

**The Chair (Mrs. Linda Jeffrey):** Sure.

**Mr. Frank Klees:** Thank you. I would very much appreciate if we could, along with the follow-up to the privacy commissioner, have every member of the committee provided with the following information: the number—I’m just interested in the number—of government amendments that were put forward and were voted on and accepted or rejected; the number of official opposition amendments that were proposed, voted on and



accepted; and the number of amendments that were proposed by the NDP that were voted on and accepted.

**The Chair (Mrs. Linda Jeffrey):** Mr. Klees, that's a motion, so that's something that everybody would have to agree to.

**Mr. Frank Klees:** Actually, I'm making it a request. I'm not making a motion. If you insist—I mean, it's just something that we would ask.

**The Chair (Mrs. Linda Jeffrey):** I'm trying to follow procedure here. I think that information would be available if you were to contact the clerk—

**Mr. Frank Klees:** Actually, it isn't. That's why I'm asking. I have made that request in the past. It has not been made available. So, if you like, I'm happy to put it forward as a motion, and we'll see what happens. It's straightforward information. So consider it a motion.

**The Chair (Mrs. Linda Jeffrey):** Please.

**Mr. Frank Klees:** Okay, I make that motion.

**The Chair (Mrs. Linda Jeffrey):** A motion has been put on the floor that some additional information be provided to all members, along with the letter to the commissioner. All those in favour? That's carried. It looks like it was unanimous.

Mr. Hampton, you have the floor.

**Mr. Howard Hampton:** Our last motion is essentially the same as the Conservative one that I think we just voted on. We'll withdraw it.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Shall section 44, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 45 through 49 have no amendments. Shall they carry? All those in favour? All those opposed? That's carried.

Shall the title of the bill carry? All those in favour? All those opposed? That's carried.

Shall Bill 85, as amended, carry? All those in favour? Those opposed? That's carried.

Shall I report the bill, as amended, to the House? All those in favour? All those opposed? That's carried.

Thank you, committee. This concludes our clause-by-clause consideration of Bill 85.

Can I just put people on notice that I'm going to be calling some members about the subcommittee meeting. Bill 99 is the next issue that has been put forward, the Lake Simcoe Protection Act. So I'll be in touch with subcommittee members to have a meeting.

**Mr. Michael A. Brown:** Madam Chair, Mr. Klees asked a question of the ministry that they deferred the answer to. I believe we have that response now, if you would like to hear it.

**Mr. Frank Klees:** Wonderful. Please, on the record.

**Mr. Steve Burnett:** Steve Burnett, Ministry of Transportation. Just in summary, three high-level provisions: one is that we have a \$1-million letter of credit that we can immediately draw on in the instance of a privacy breach to cover any liability; the liability cap that we have in place does not apply to breaches with respect to personal information, so our vendors are responsible for the full extent of the liability with respect to breach; and we also have termination provisions within 30 days for breaches related to privacy. We also have some structural things with respect to agency agreements for protection of health information over and above driver licence information.

**Mr. Frank Klees:** Thank you very much.

**The Chair (Mrs. Linda Jeffrey):** Thank you, committee. That concludes our business for today. I appreciate your attendance. We're adjourned.

*The committee adjourned at 1743.*







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#### **Substitutions / Membres remplaçants**

Mr. Bas Balkissoon (Scarborough–Rouge River L)  
Mr. Michael A. Brown (Algoma–Manitoulin L)  
Mr. Howard Hampton (Kenora–Rainy River ND)  
Mr. Frank Klees (Newmarket–Aurora PC)

#### **Also taking part / Autres participants et participantes**

Mr. Todd Milton, counsel, legal services branch, Ministry of Transportation  
Mr. Steve Burnett, service management and business integrity office, Ministry of Transportation

#### **Clerk / Greffier**

Mr. Trevor Day

#### **Staff / Personnel**

Ms. Susan Klein, legislative counsel



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## Legislative Assembly of Ontario

First Session, 39<sup>th</sup> Parliament

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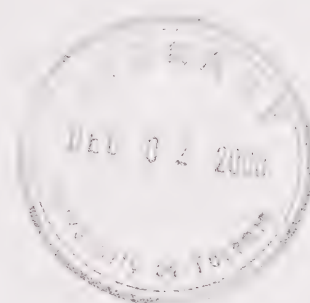
Première session, 39<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 17 November 2008

# Journal des débats (Hansard)

Lundi 17 novembre 2008



## Standing Committee on General Government

Lake Simcoe Protection Act, 2008

## Comité permanent des affaires gouvernementales

Loi de 2008 sur la protection  
du lac Simcoe

Chair: Linda Jeffrey  
Clerk: Trevor Day

Présidente : Linda Jeffrey  
Greffier : Trevor Day



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 17 November 2008

Lundi 17 novembre 2008

*The committee met at 1401 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. I'm going to call the Standing Committee on General Government to order. We're here to discuss Bill 99, An Act to protect and restore the ecological health of the Lake Simcoe watershed and to amend the Ontario Water Resources Act in respect of water quality trading.

Could someone read the report on the subcommittee business?

**Mrs. Carol Mitchell:** Your subcommittee met on Wednesday, October 29, to consider the method of proceeding on Bill 99, An Act to protect and restore the ecological health of the Lake Simcoe watershed and to amend the Ontario Water Resources Act in respect of water quality trading, and recommends the following:

(1) That the committee meet in Toronto on Monday, November 17, 2008, and Wednesday, November 19, 2008, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the Toronto Globe and Mail, the Toronto Star, L'Express, and a major paper in the cities of Barrie and Orillia for one day during the week of November 3, 2008.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel and the Legislative Assembly website.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Friday, November 7, 2008.

(5) That groups and individuals be offered 10 minutes for their presentation. This time is to be scheduled in 15-minute increments to allow for questions from the committee.

(6) That, in the event all witnesses cannot be scheduled, the committee meet in Toronto on Monday, November 24, for an additional day of public hearings.

(7) That an official from the Trent-Severn canal be invited to appear before the committee.

(8) That the deadline for written submissions be 5 p.m. on Wednesday, November 19, 2008.

(9) That the research officer provide the committee with a summary of presentations.

(10) That, for administrative purposes, proposed amendments be filed with the committee clerk by 5 p.m. on Thursday, November 20, 2008.

(11) That the committee meet for the purpose of clause-by-clause consideration of the bill on Monday, November 24, 2008, or on Wednesday, November 26, 2008, should an additional day of public hearings be required—an additional day was not required, as the two days were all that were needed.

(12) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Mrs. Mitchell.

Just an update for committee members on the request that we made to the official from the Trent-Severn canal, the invitation to appear before committee: They were invited, they respectfully declined, but they will be forwarding materials shortly to the committee.

As Mrs. Mitchell indicated, we will be doing clause-by-clause consideration of the bill on November 24; we were able to accommodate all requests by delegates.

Our first delegation is—

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** Oh, sorry. Can we vote on the minutes? All those in favour? All those opposed? That's carried.

## LAKE SIMCOE PROTECTION ACT, 2008

LOI DE 2008 SUR LA PROTECTION  
DU LAC SIMCOE

Consideration of Bill 99, An Act to protect and restore the ecological health of the Lake Simcoe watershed and to amend the Ontario Water Resources Act in respect of water quality trading / Projet de loi 99, Loi visant à protéger et à rétablir la santé écologique du bassin hydrographique du lac Simcoe et à modifier la Loi sur les ressources en eau de l'Ontario en ce qui concerne un système d'échange axé sur la qualité de l'eau.

## INNISFIL DISTRICT ASSOCIATION

**The Chair (Mrs. Linda Jeffrey):** Our first delegation is Innisfil District Association, Mr. Avery. Welcome, Mr.



Avery. When you get comfortable, please state your name and the organization you speak for. You'll have 10 minutes, and when you get close I will give you a warning.

**Mr. Don Avery:** Good afternoon. My name is Don Avery. My address is 45 Tijou Woods Place in Innisfil.

First, I'll give you some brief background.

As chairman, I'm speaking on behalf of the Innisfil District Association. We are a ratepayers' group representing about 700 people, about half of whom own or occupy waterfront property in Innisfil, in the county of Simcoe. Our association has existed for over 30 years. I was the president from 2002 to 2007, before stepping up to the chairman's position that I now occupy.

In 2007, the IDA appeared before the Ontario Municipal Board in opposition to the Big Bay Point Resort and mega-marina proposed for Innisfil. I personally have been sued by the developer in that case for approximately \$1 million and am now personally liable for some or all of the present adverse cost claim for \$3.2 million now before the OMB.

The mission of our association is to support the long-term sustainable development of Innisfil and Simcoe county, while protecting the lifestyles of the citizens, the health of Lake Simcoe and our natural environment.

Our association was a part of the Rescue Lake Simcoe Coalition from its inception in 2003, and I am a charter director of that coalition. It follows, then, that the Innisfil District Association is a supporter of Campaign Lake Simcoe and signed on to support Campaign Lake Simcoe's EBR submission on the discussion paper last spring.

In my own case, my family has owned property on Lake Simcoe for over 60 years. I have been a permanent resident of Innisfil for the past five years. I was instrumental in the research and publishing of a book in 1999 entitled *Big Bay Point, Lake Simcoe, Ontario, Canada: A Special Place*. This book contains much of the early background on that area, such as the first settlers, the first cottagers, the lake boats of the 19th and 20th centuries that plied the waters of Lake Simcoe, as well as other related topics. So it goes without saying that I have a long association with and a deep interest in Lake Simcoe.

Thank you for the opportunity to speak with you about the Lake Simcoe Protection Act, Bill 99. We are pleased with the direction the act has taken and the commitment the province has made to this gem of southern Ontario. I know well that this lake has been a source of pleasure to a great many for over 200 years, whether it be for boating, fishing, swimming, picnicking or just casual viewing. But after a lifetime of enjoying its benefits, I can also say that the lake has been very greatly impacted by human activity in the past 20 years or so. Thus, this act has arrived just in time.

While the act is good, it still needs to include some specific items if it is to work effectively. So let me deal with our concerns.

We're concerned that we do not know how transition regulations are going to work yet, and this is the crux of the issue. If people continue to see sprawling, unsustainable suburbs sprouting up in Simcoe county over the next 10 years, they're not going to believe your government has addressed the environmental health issues of Lake Simcoe. You need to anticipate the public response to this apparent contradiction and set strict development regulations accordingly.

To be consistent in the application of new rules set for development on Lake Simcoe, we need the act to affect development proposals that are in the pipeline now. All developments or projects lacking final permits or regulatory approvals must be caught by regulation, be subject to the act and/or plan, and meet the environmental and development standards outlined in the plan. This is an environmental act, and as such, issues other than phosphorus loads must be addressed in development approvals. This is the way it was done for the Oak Ridges moraine and the greenbelt. Lake Simcoe should be treated no differently.

We strongly advise that the Lake Simcoe Protection Act be made effective as of December 6, 2007, the date of the announcement of the interim phosphorus regulation.

#### 1410

The provision for shoreline protection needs to be strengthened. We suggest you delete the clause "The Lieutenant Governor in Council may make regulations" and replace it with "The Lieutenant Governor in Council will make regulations," and that these regulations will be in place at the coming into force of the plan. Furthermore, it must be explicit that the Lake Simcoe protection plan's shoreline development restrictions apply to residential redevelopments, resort development, and servicing, and include a shoreline restoration plan.

At present, no lakefront residential property owner can alter his waterfront without permission from the Lake Simcoe Region Conservation Authority. In fact, the conservation authority are quite strict on what they will and will not allow, particularly in regard to any negative effect on fish habitat. For example, you cannot dump a load of sand on your waterfront, expand your boathouse, or dig a swimming pool near your shoreline. Yet with the Big Bay Point project development we have the situation of a developer being allowed to dig an inland lake of 30 acres to accommodate a 1,000-boat-slip mega-marina which connects to the lake. This would seem to not only pose a further threat to the deteriorating condition of Lake Simcoe, but also be unjust and unfair. The shoreline policy must be even-handed.

Regarding this project, the position of our association—and we believe most, if not all, groups of the Rescue Lake Simcoe Coalition and Campaign Lake Simcoe—is that no act that purports to protect the lake can permit such a radical, large-scale alteration of the shoreline and the natural environment that buffers it. Also in regard to this project, whether it is through this act or some other piece of legislation, the government



must provide protection for its citizens from strategic lawsuits against public participation, or SLAPP suits. No member of the public should have to endure what I and the members of my association have had to endure over the past five years. Lawsuits outstanding against our members, lawyers and other critics of the Big Bay Point projects now total over \$90 million. This act and other statutes like the Planning Act or the Environmental Assessment Act are meaningless unless residents can speak out openly against projects that threaten the environment. This government should move quickly, as Quebec has done, to guarantee that citizens be allowed to participate free from the chill of developer lawsuits.

Section 18 provides for the creation of a Lake Simcoe science committee. I believe this committee is made up of 15 or more very capable individuals, and the government is to be commended for their brilliance in making such a fine selection.

Section 19 provides for the creation of a Lake Simcoe coordinating committee. However, it is clear that this body and the science committee are both essentially advisory bodies and do not have any real powers. Environmental groups, specially referenced in section 19(4), paragraph 6, must be well represented on the Lake Simcoe coordinating committee in order to achieve the transparency, co-operation and public credibility lacking in LSEMS. The absence of these qualities in LSEMS is what essentially motivated the public and environmental groups, especially the Rescue Lake Simcoe Coalition, to demand a review of the governance structure of LSEMS.

Public and environmental interests are underrepresented in the governance provision as it is now written. It should follow the LSEMS working group recommendations and have equal representation from industry, the public and government: one third representation from each of these sectors.

At the July 7 Lake Simcoe summit, Premier McGuinty stated that this act and plan are going to be based on the "best available science." If this is to become a fact, then we believe that the advice of the provincially appointed Science advisory committee, or SciAC, must be followed.

**The Chair (Mrs. Linda Jeffrey):** Mr. Avery, you have one minute left.

**Mr. Don Avery:** All right.

Recognizing that wildlife relies on healthy habitats and that wildlife is an integral part of ecological health, the 100-metre vegetative buffer must be adhered to.

We should aim for permanent protection of natural areas, as these guidelines recommend, and protect at least 30% of the forest cover of the Lake Simcoe watershed. Forests also filter further contaminants from the land, especially those that contain phosphorus that could adversely impact water quality on the lake.

My printed report includes a summary of our recommendations. Let me merely conclude by saying that if the recommendations of the scientific advisory committee are adopted and our call for maximum ecological protection is answered, my association will stand resolutely

and appreciatively with anyone who supports Bill 99. Thank you for undertaking this critical leadership on behalf of the lake.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Mr. Avery.

Mr. Barrett, you have about a minute and a half.

**Mr. Toby Barrett:** Thank you, Mr. Avery, for your presentation from the Innisfil District Association.

Two quick questions. I know we have only five minutes to go around the horn. I'll just pick up on a few things.

You're concerned for the suburban sprawl. We know the watershed now is home to about 350,000 people, and there are another quarter of a million people on the way, as I understand. So in that same paragraph you talk about the crux of the issue as knowing how the regulations are going to work. A quick question: Would you advocate public hearings when we get to that stage of regulation six or nine months down the road?

The second question: You talk about the \$90 million of lawsuits and how that inhibits people from speaking out. Do you have any further information on what Quebec has done?

**Mr. Don Avery:** Let me take the first question first. Yes, I would welcome public hearings. I'm not suggesting that development should be halted; certainly, we're going to have development. I think you have to be very careful on where it goes, particularly as it may affect Lake Simcoe.

As to your second question, which I think pertains to Quebec, I believe that they are now developing bylaws to address these SLAPP suits. I don't know that I could tell you any more than that.

**Mr. Toby Barrett:** Well, thank you, sir. Maybe legislative research could pull a modicum of information on this Quebec approach, if there is an approach there.

**The Chair (Mrs. Linda Jeffrey):** Okay. Mr. Tabuns?

**Mr. Peter Tabuns:** Mr. Avery, thanks for the presentation. I have two questions.

First, if this act was in place today and Big Bay Point wasn't going forward, would this act block it?

Secondly, you referred to "developments" in the pipeline, plural. Are there other substantial developments that you're concerned about going ahead?

**Mr. Don Avery:** Your first question was, if the act were in place today, would that Big Bay Point development go forward? Well, it depends on what's in the act. If the appropriate restrictions on, for example, shoreline development were there, then I don't see how it could.

As to other developments, I'm not sure that I can specifically mention any, but our sense is that if the Big Bay Point development proceeds, it could well occur in other places around the lake and even in other places in the province. I don't know if that answers your question, but that's our concern.

**Mr. Peter Tabuns:** No, it is helpful. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Flynn.



**Mr. Kevin Daniel Flynn:** Thank you, Mr. Avery. I thought your report was very thorough and very balanced. I know how it feels to run out of time near the end, and you had to skip over five points here. I wondered if you would like to take the minute or so that we have and maybe expand on some of those points you were forced to skip over at the end. That would be on the five recommendations, the five points of the summary.

**Mr. Don Avery:** Okay. Well, I'd quickly summarize what we see as the vital things that are needed in the plan. Certainly, as I mentioned, it must state clearly that the regulations would apply equally to marinas, resorts and residential developments. It must have an effective date and clear transition rules and must not allow grandfathering of projects lacking final permits and regulatory approvals.

1420

It must not allow significant shoreline alteration. We've talked about the 100-metre buffer that needs to be there. And that shoreline policy, as I mentioned, must be even-handed.

The targets for phosphorus, surface impermeability and natural cover must follow the advice of the scientific advisory committee. Also, policies covering the above targets must be identified as designated policies: natural cover targets; permeable surface minimums; setbacks from watercourses, wetlands and the lake; and shoreline policies.

There must be, finally, adequate and sustained funding with this plan, which needs to be reinforced with a practical enforcement regime. Unless we correct these long-standing problems of funding and enforcement, progress and results will be difficult.

That summarizes what we'd like to see.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for your deputation today. We're grateful that you came to see us.

### CAMPAIGN LAKE SIMCOE

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Campaign Lake Simcoe, Claire Malcolmson. Welcome. We're glad you're here today. As you make yourself comfortable, please state your name for Hansard and the organization you speak for, and then once you've done that you'll have 10 minutes. I'll give you a one-minute warning.

**Ms. Claire Malcolmson:** My name is Claire Malcolmson. Good afternoon. I'm here representing Campaign Lake Simcoe. I'm the coordinator of Campaign Lake Simcoe, which is a partnership of Environmental Defence, Ontario Nature and the Rescue Lake Simcoe Coalition. Thank you very much for the opportunity to speak with you this afternoon.

I am a fifth-generation cottager at Innisfree on DeGrassi Point in Innisfil. Lake Simcoe and the 250 acres of interior forest that my extended family has taken care of over the last 120 years are simply the backdrop of my childhood.

After eight months of being in Africa in 1999, I returned a proud Canadian, determined to create models of sustainability that could be used in those parts of the world that don't have the ability to invest resources to develop plans for sustainable futures. I believe that if we can't get it right, then the planet is in trouble, so I set about working on the little piece of the planet that I could help save. Here we are, eight years later, and I'm providing advice to the province on a model for sustainable living in watersheds, based on my lake. This is so rewarding. I can hardly begin to express how important this is to me and how important the strength of the act is not just for me, but for our human progress, for the possibility of living in balance with nature without denying future generations the same possibilities.

As I said, I coordinate Campaign Lake Simcoe. It is a coalition of 45 local groups, speaking with one voice for the protection of Lake Simcoe. What makes the Lake Simcoe story so special is the remarkable citizens' movement and the response from provincial and federal governments. While we try to speak with one voice when it comes to policy, we take action in very local ways. Whether it's residents at Moon Point or Big Bay Point fighting development and trying to protect wildlife habitats, or my family at DeGrassi restoring an endangered savannah, or the Ladies of the Lake making enviro-movies with youth, or MegaWHAT? trying to keep natural gas power plants out of our airshed, Lake Simcoe is home to a committed collection of people, and you noticed and you took action, so thank you.

From the beginning, the task of saving this lake and its watershed has been a non-partisan issue. It was here at Queen's Park in 2006 that Conservative MPP Garfield Dunlop and David Donnelly connected, realizing that they both wanted to draft a Lake Simcoe protection act. Almost two years later, at the Lake Simcoe summit which Campaign Lake Simcoe and the Ladies of the Lake organized, Mr. McGuinty made an election promise to introduce an act. John Tory was making his own promises for Lake Simcoe. The protection of green space in Ontario has typically been guided by a non-partisan spirit, and this is certainly no exception.

Thank you for introducing the Lake Simcoe Protection Act. It builds on the legacy of this and previous governments' protection initiatives.

While supportive of the general intent of the act, Campaign Lake Simcoe is concerned that the act's purpose will not be achieved if a number of issues are not adequately addressed in the act and the pending Lake Simcoe protection plan.

The targets for yearly phosphorus loading, surface impermeability in the watershed and for natural cover—meaning forests, wetlands, and scrublands—must follow the advice of the Science advisory committee, which is SciAC.

This summer, I sat on the stakeholder advisory committee, hearing assurances that SciAC's recommendations would be followed by the government, yet when the stakeholder and science advisory committees re-



viewed the draft plan this summer, the policies and targets revealed many significant departures from the advice of SciAC. Based on this concern, we are adamant that the plan and the act must follow the advice of the Science advisory committee. This is a bottom line for Campaign Lake Simcoe members.

Naturally vegetated buffers should be a minimum of 100 metres wide on shorelines and rivers in order for them to be used as wildlife corridors between larger anchor patches in the natural heritage system. One hundred metres is what SciAC recommends for wildlife corridors, and that is the advice we have to follow.

If you're not familiar with Lake Simcoe, don't forget that 12,000 cottages line the shores of this lake, that the shoreline is already hardened, and it's unnatural and under stress. These realities call for the most generous riparian buffers to rectify this imbalance.

The shoreline policy must not allow significant shoreline alteration and must be logical and fair. If an individual cannot build a stone dock, but a developer at Big Bay Point—or, by extension, anywhere in the province—can carve a 30-acre lake into the shoreline for a marina, that's unfair and it sets a dangerous precedent for lakes in Ontario.

We created a four-minute video on this topic, and I suggest you take a peek. There's a link in the document that you've been given. We just came out with that last week, so it's fresh.

The act distinguishes “designated” from “have regard to” policies. In order for the act to achieve its purpose, the following must be classified as designated policies: natural cover targets; permeable surface minimums; setbacks from watercourses, forests, wetlands and the lake; and the shoreline policies.

The act and plan must clearly state that regulations apply equally to marinas, resorts and residential developments. There is no better way to discourage citizens from taking action to protect their lake than for them to see the environmental impacts of massive developments wipe out any progress made by citizens and environmental organizations. There must be no exceptions made for marinas, resorts and residential developers in the application of environmental practices and regulations.

Adequate and sustained funding must accompany the plan. A few years ago, the Lake Simcoe Region Conservation Authority estimated that environmental projects necessary to improve water quality would cost \$165 million. The ability of the LSRCA to protect the lake was drastically reduced during the 1990s due to provincial funding cuts. To keep going, the conservation authority invited an increased role for municipalities that stepped up with funding. At the same time, a coordination government body headed by the conservation authority was established: the Lake Simcoe environmental management strategy, LSEMS—a great acronym. What this did, in essence, was make Lake Simcoe governance all-government and give rise, at least optically, to conflicts of interest, resulting in decisions about development that did not put the lake first. This also shut the public out from meaningful participation in decision-making.

It's crucial that the province becomes the entity to lead the plan, with meaningful input from citizens, business and government. This will ensure that all decisions are above any perceived suspicion of self-interest at the local level and ensure that those who have no other interest than the well-being of the lake are heard and heeded. Going with the recommendations of the LSEMS working group about governance of Lake Simcoe is essential to guarantee transparency and honesty.

The last couple of things: The act and the plan need to be enforceable and these costs have to be considered and included in the plan's budget; and the plan must have an early effective date, set clear transition rules, and must not allow grandfathering of projects lacking final permits or regulatory approvals.

I have three specific changes that I am requesting to the act, and there is more detail in the document that I've given to you. The first one is the effective date. I'm concerned that we don't know how transition regulations are going to work. There's a lot of development planned. There is some suspicion that in fact, in terms of the development applications that have been put forward, we have already reached the goal for 2031 for Simcoe county. I can name some; I know you asked Mr. Avery. Craighurst, Eight Mile Point, a little thing called Stonehenge; in Alcona, some massive developments; in Innisfil, 2,000 homes planned for the next few years; Leonard's Beach. There's a lot of development pressure in Innisfil.

1430

**The Chair (Mrs. Linda Jeffrey):** Ms. Malcolmson, you have one minute left.

**Ms. Claire Malcolmson:** Excellent. Really, the effective date needs to be December 6, 2007, which is when the province introduced the interim phosphorus regulation. This was clearly when the province made it very clear that they plan to take action on Lake Simcoe to reduce phosphorus loads.

The shoreline protection is meant to be based on the best available science, as is this entire act and plan, according to Premier McGuinty. Again, the 100-metre buffer needs to be part of the act and the plan. I'm a bit concerned with the wording in 26(2)(a). It should read something more specific that includes the 100-metre distance.

Finally, municipalities' ability to surpass provincial policies in subsection 5(2): Municipalities should be able to create policies that are more restrictive than what are in the plan. There have been quite a lot of grumblings from municipalities around the greenbelt or hesitation to become part of the greenbelt because their local plans are more restrictive than the province's. Also with the pesticide bill, there was some resistance to that. I hope we can learn from that and allow municipalities to do better.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Ms. Malcolmson. I'm sorry, your time has expired. Otherwise, we won't get to questions.

**Ms. Claire Malcolmson:** Oh, that's fine. I'm finished. Thank you.



**Mr. Peter Tabuns:** Claire, thanks very much for that presentation. One of the things you noted was a distance between the recommendations of the scientific advisory committee and the direction that was taken in the drafting of this bill. If the scientific advisory committee recommendations aren't heeded, aren't implemented, do you believe that the bill would then still be strong enough to protect the lake?

**Ms. Claire Malcolmson:** No, because the province appointed a scientific advisory committee to bring together all of the reports. Basically, a lot of scientific data has been collected by the MOE, the MNR and the conservation authority, to name a few, over the last 30 years, and someone, some group, needed to bring it together to make sense of it and to provide some recommendations.

They set those recommendations based on the goal of reducing phosphorus in the lake to a target that was going to be sustainable. The target right now is 75 tonnes a year that can go into Lake Simcoe. It turns out that it's more like 40 that we need to actually achieve in order for the lake to survive.

So we are going to need some very drastic changes to the way we do business, the way we build to our shorelines and the way we treat them around the lake. That was what the scientific advisory committee was charged with establishing, and to disregard their recommendations goes against the intent of the act: to protect the ecological health of the watershed.

**Mr. Peter Tabuns:** Thank you. That's very useful.

**The Chair (Mrs. Linda Jeffrey):** To the government side.

**Mr. Kevin Daniel Flynn:** Thank you, Claire, for your presentation. One part you focused on would be on page 2 of your presentation, where you took quite a bit of time here in the report to talk about how you would like to see the governance end up at the end of the day and why it's important that somebody be accountable for this, and it should obviously be the people who are engaged in the work who are accountable at the end of the day. Can you expand on that a little bit, why that's such an important point for you?

**Ms. Claire Malcolmson:** Yes. I think for quite a long time, the public has felt shut out. They haven't really had the ability to influence decisions, and it's that frustration that led to the creation of the Rescue Lake Simcoe Coalition, Campaign Lake Simcoe, the Ladies of the Lake. Six years ago, there was almost nothing going on, and it's that citizen frustration and environmental organization frustration at their lack of ability to be part of the solution that led to a call for a review of the governance model.

One of the things that we really need to achieve in this new governance model is ingenuity, and we really need connectors. If it's only government—no offence to government—you have a certain type of person. We need it to be a very dynamic team, and so, for that reason, I think that industry, which tends to be much better than NGOs or government at innovation and sparking new ideas, really needs to be an important part of the team. So do the public, because they need to have their faith

restored in the system, and government needs to be there obviously because of their ability to create and set policies and help fund the program.

We also need the public and industry to help with funding, because the province can't foot the bill 100%. For example, the conservation foundation for the conservation authority has done fantastic work fundraising, but they're nowhere near raising as much money as we need to save this lake.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Good answer. Mr. Barrett.

**Mr. Toby Barrett:** Thanks, Campaign Lake Simcoe. Mrs. Savoline has a question as well. Maybe mine has been answered.

**Governance:** Do you see the province of Ontario managing this in the future years, or a local body created—

**Ms. Claire Malcolmson:** I would say, let's see how it goes. I'm not sure why the province has said that it might change, that it might start off being the province and then later it might be coordinated locally. I think we need to see how it goes in order to address that.

**Mrs. Joyce Savoline:** Great presentation. Thank you very much. There have been suggestions made that there should be some protection for citizens and interest groups, kind of the Goliath in the David and Goliath story. Given that we're in a democracy, have you got any suggestions of how that might be managed through the act?

**Ms. Claire Malcolmson:** Well, it will apply beyond the act. I think that with the Lake Simcoe situation not only faced by people at Big Bay Point but other places, Creemore and so on, people have backed down from participation as a result of intimidation. So it's beyond this act, and it would be great if something was effected through the Lake Simcoe Protection Act, but it needs to be broader than that.

Essentially, people shouldn't be participating in two things at one time. I think it's very brave of Mr. Avery to come up here and make a deputation while he's being sued. We need to make sure that while people are being sued, the public process doesn't continue or vice versa. You've got to control one thing in order to allow people to actually participate in an honest way and to fulfill the intention of a democracy.

**Mrs. Joyce Savoline:** That's great. Thanks.

**The Chair (Mrs. Linda Jeffrey):** Thank you for your thoughtful presentation. We appreciate your being here today.

#### BOND HEAD/BWG RESIDENTS FOR RESPONSIBLE DEVELOPMENT

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Bond Head/BWG Residents for Responsible Development.

Good afternoon, gentlemen, and welcome. As you get yourselves settled, if you're both going to be speaking, if you could identify yourselves for Hansard and the organization you'll speak for, and then once you've done



that, you'll have 10 minutes. I'll give you a one-minute warning when you get close to the end of your time.

**Mr. Phil Trow:** Great. Good afternoon, Madam Chair and committee. I appreciate being here today. My name is Phil Trow, and with me is Robert Keffer. We are representing Bond Head/BWG Residents for Responsible Development. This is a non-profit organization of residents working together to ensure that our community retains its strong rural and agricultural character.

Our mission statement says we want to pass on to the next generation a healthy environment and a beautiful countryside. We believe the Lake Simcoe Protection Act is necessary and will protect our environment; therefore, we support it.

We are located in the town of Bradford West Gwillimbury, just north of the Holland Marsh in south Simcoe county.

Subsection 3(2) says the act applies to the Lake Simcoe watershed. If I may explain why this section should be expanded, our area is under strong development pressure. At this point, I think you have a nice photograph of our area. It's an aerial view of Bradford centre, the most northern end of the Holland Marsh, and its relationship to Lake Simcoe. You can see at the top of the photo Cook's Bay. We thought this was an important photo for you to see the proximity of how close the lake is to our town. In the middle of the picture you have a road going east and west, and if you can imagine going west along that route 10 kilometres, you would come to our small rural hamlet of 500 people. Getting there, you would have passed beautiful, prime agricultural farmland.

1440

There are two development proposals before the OMB right now. One is called OPA number 15, which wants to rezone 1,800 acres to employment lands at Highway 400 and County Road 88 and create a new settlement area. The other is OPA number 16, which will increase the boundaries and the population of Bond Head from 500 people to 4,500 people. These proposals are supported by our local council, but have yet to be determined by the county and the province.

At this point, I'd like to pass it over to Robert Keffer to continue our presentation.

**Mr. Robert Keffer:** The interesting point of these proposals is that they will use sewers going into Bradford's sewage treatment plant and on to Lake Simcoe, but all of Bond Head and some of the employment lands are in the Nottawasaga watershed. From my understanding of the Lake Simcoe Protection Act, Bond Head will not be governed by the plan, but they could be getting their water and sending their waste water to Lake Simcoe. Bond Head is in the Nottawasaga watershed. How can this be? The health of Lake Simcoe is affected by any transfers from other watersheds. I think the Lake Simcoe Protection Act should stipulate that there will be no new inter-watershed transfers of water.

Imagine if a developer owns property in two watersheds but could send the waste water from both to Lake Simcoe. Which property would he be more likely to

develop, the one that will come under all the restrictions of the act or the one where can use the services of Lake Simcoe but have none of the restrictions?

There are mechanisms in the act where the boundaries can be expanded. I feel that there are areas that we know of now that should be added to the act without having to wait for the added process. I would ask that clause 15(2)(b) be removed. This pertains to increasing the area of the Lake Simcoe Protection Act. I think in certain circumstances the Lake Simcoe Protection Act should supersede the Planning Act when regulating outside the watershed.

If I may speak to the governance of the plan, there is subsection 5(4), "Responsibility for Implementing Policies"—"designate a public body or person." Our group would support the recommendations of governance of the LSEMS working group where there was a secretariat that would be the one voice for the lake. The Lake Simcoe Region Conservation Authority is very good at educating and monitoring the watershed, but it is governed by a board of directors with 20 members. Sometimes the smaller the number at the top of an organization, the more that will get done.

The county of Simcoe and the province undertook a growth study to determine where growth in Simcoe county would be best served, and this was called the IGAP study. It was done by a consulting firm called Dillon Consulting to look at the big picture. Their recommendation lined up with Places to Grow, with the majority of growth to occur in Barrie. The Lake Simcoe Region Conservation Authority board of directors came out with a strong position against the IGAP options. They preferred an option that matched the assimilative capacity study for each sub-watershed, so growth would be spread out over the watershed.

I am a seventh generation farmer who found this recommendation by Lake Simcoe Region Conservation Authority to not be in the best interests of the agricultural industry. The science behind the assimilative capacity study is that the farm community will decrease their phosphorus loads so that the development community can increase their phosphorus pollution. When the assimilative capacity study is done on a sub-watershed level, any area without farms, like Barrie, cannot grow.

I would prefer for development to be kept away from farming areas so we don't have the traffic problems, the nuisance complaints and the trespassing problems. If farms want to expand, they follow the Nutrient Management Act and do a nutrient management plan so that their phosphorus loadings will decrease. We don't ask towns to build storm water ponds so that the neighbouring farm can increase and grow. We look after our own growth. Towns should look after their own phosphorus reduction so that they can grow.

This leads me to speaking on section 30 of the act, water quality trading. This section, I believe, would benefit the development community and not the agricultural community, with questionable benefits to Lake Simcoe. There would have to be a bureaucracy set up to



run this. There would have to be a lot of current scientific research done to determine benefits of best management practices on phosphorus budgeting. There will be a certain amount of scientific uncertainty with non-point sources of phosphorus.

I know some of the studies referred to in some phosphorus budgets are 30 years old, and there have been a lot of changes in farming practices in the last 30 years. Just the number of farmers that have taken the environmental farm plan will have a profound change on current practices compared to earlier practices.

Farmers will voluntarily use best management practices, but they will become suspicious if they are indirectly funding urban growth. If the Lake Simcoe protection plan puts limits on point source discharge of phosphorus, phosphorus trading weakens any regulations: If you can't meet the limits, you can buy your way around them.

In Simcoe county, the planning regulations aren't as stringent as in York or Durham because of the greenbelt. In Simcoe county, any planning application will appear to be negotiable, and any servicing studies will have to take into account the possibility of phosphorus trading. Imagine the improvement in Lake Simcoe if the farming community's advances in phosphorus reductions aren't counterbalanced by the increased loadings from urban sources.

If we want Ontario to be in the forefront of new technology for ensuring water quality, water quality trading would be counterproductive to this initiative. If we want new technology, we don't want people to be able to take the easy way out and phosphorus trade.

**The Chair (Mrs. Linda Jeffrey):** Gentlemen, you have a minute left.

**Mr. Phil Trow:** We are supportive of the intent of this act. There are some changes we think will strengthen the act. There are four points:

(1) Section 3(2) says the act applies to the Lake Simcoe watershed. The health of Lake Simcoe is affected by any waste water transfers from other watersheds. No new transfers should be allowed.

(2) Section 15(2)(b): If expanded to other watersheds, the act should be able to supersede the Planning Act and Condominium Act.

(3) Section 5(4), responsibility for implementing policies: We would suggest a governing structure as recommended by the LSEMS working group with a secretariat that would be one voice for the lake.

(4) Section 30, water quality trading: This could be time-consuming and costly to set up, with little proof of utilization.

We thank you for the time that we have been given to talk to your committee.

**The Chair (Mrs. Linda Jeffrey):** Thank you, and our first question will be from the government side. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you for the presentation; it was very thorough. Good to see you again.

I took some time to go up and do a little visit because my experience with this area had been really what I could see from the 400 as I was driving up to the cottage, which was in some places a few miles and in some places a few feet. Just confirm for me that Bond Head is outside the watershed but is inside Simcoe county. Is that correct?

**Mr. Robert Keffer:** That's right, yes.

**Mr. Kevin Daniel Flynn:** Okay. Your first point here, you gave us two realistic proposals, one at 400 and 88 and one being OPA 16, I think you referred to it as, which would increase the population growth of Bond Head.

In your first recommendation you're saying that no new transfers should be allowed. I took that to mean that you couldn't artificially transfer water that was not naturally flowing through a watershed from outside the watershed into the watershed. But then, in the second point you said, "if expanded to other watersheds." Presumably if you don't get what you want in number one, you'd like what is in number two?

1450

**Mr. Robert Keffer:** Yes. Realistically, for new sewer lines to go from the Nottawasaga watershed to the Lake Simcoe watershed really isn't the best practice for keeping Lake Simcoe healthy. Point two, in the act it does give direction that it has to go through the environmental registry and quite a process of consultation before any expansion—

**Mr. Kevin Daniel Flynn:** Okay. If I could just ask a short question—

**The Chair (Mrs. Linda Jeffrey):** Sorry, Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Do I have no time?

**The Chair (Mrs. Linda Jeffrey):** No.

**Mr. Kevin Daniel Flynn:** It was a great question.

**The Chair (Mrs. Linda Jeffrey):** I'm sure it was. Unless somebody else takes pity on you, no.

Mr. Barrett.

**Mr. Toby Barrett:** Thank you for the presentation. Section 30 on water quality trading: I just wondered if you could expand a bit more on your understanding of that. We know, for example, that the agricultural community is already subject to nutrient management legislation and, if that legislation is valid, has already reduced their phosphorus loading. Are you aware of this water quality trading being done anywhere else in the world? And secondly, is this—farmers can trade, can buy credits or quota, put a value on quota; developers can buy quota and start moving this around. How do you see that working?

**Mr. Robert Keffer:** In eastern Ontario there has been a pilot project of phosphorus trading. They set limits for the river that runs through the watershed at zero for any new sewage treatment plants, but it is possible to start a new sewage treatment plant if you buy phosphorus credits from the farm community. They set up an organization to try and talk the farmers into doing certain projects that will qualify for phosphorus trading.

I think the problem is getting enough farmers onside who will be interested in participating. I think the



problem has been that there hasn't been a lot of uptake from the farm community in the phosphorus trading and there is quite a bureaucracy that's set up. They have to try and decide if the phosphorus is going into a stream from non-point sources, which could be soil erosion or whatever, compared to something that you can definitely measure.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Tabuns.

**Mr. Peter Tabuns:** Yes, thanks for your presentation because it's very concrete, where you saw problems and where you wanted changes.

The whole question of diversion of water from other watersheds into Lake Simcoe: Can you give us examples of existing ones or ones that you feel are potentially there, should this act go ahead unamended, as you suggested?

**Mr. Phil Trow:** That's a hard question to answer. With the situation in our community you have two watersheds, the Lake Simcoe and the Nottawasaga, and for our particular hamlet, where we live—where I live, where Rob farms his land—we're considered in the Nottawasaga. There's a development proposal for that situation there. Yet, right now, that hamlet does receive water from Lake Simcoe.

There's a larger-scale development proposal that would go in between Bond Head and Bradford that would encompass thousands of acres of farmland and 120,000 people in between the two areas of what you see here. You see Bradford, which is 48,000; then you have our small hamlet of 4,500; then you have a larger-scale proposal, which is on the back burner, as they say. So you have that large amount of people coming into two watersheds, and you're trying to come up with a proposal as to how we direct water and protect a source of water properly.

**Mr. Robert Keffer:** But there are other areas, like Barrie, if they expand south of Innisfil into the employment lands—if they service some of those employment lands, some of those employment lands would be in the Nottawasaga watershed as well. So it is a difficult question.

**The Chair (Mrs. Linda Jeffrey):** Gentlemen, thank you very much for being here today. We appreciate your delegation.

#### FEDERATION OF ONTARIO COTTAGERS' ASSOCIATIONS

**The Chair (Mrs. Linda Jeffrey):** Our next group is the Federation of Ontario Cottagers' Associations, Mr. Rees and Ms. Moore. Welcome. As you settle yourself, if you're both going to be speaking, if you could say your name and the organization you speak for. Then you'll have 10 minutes, and I'll give you a one-minute warning as you get a little closer. The floor is yours.

**Mr. Terry Rees:** Thanks for this opportunity to speak to this important bill and the Lake Simcoe plan which will inform it. My name is Terry Rees and I'm the

executive director of the Federation of Ontario Cottagers' Associations. On my right is my colleague Ros Moore, who's the vice-president of our board. I'm going to speak first and then turn it over to Roslyn.

I'm speaking on behalf of FOCA, the Federation of Ontario Cottagers' Associations, an incorporated, not-for-profit organization. It's a province-wide association that represents about 600 waterfront property owners' groups, with over 50,000 member families. Our group's mission is to provide representation, assistance and leadership to and for waterfront associations on issues affecting their interests, and to encourage good environmental stewardship on behalf of every waterfront property owner. FOCA is a supporter of Campaign Lake Simcoe and signed on to support Campaign Lake Simcoe's EBR submission and discussion paper last spring.

Ontario's waterfront property owners have a vested and long-term interest in sound and balanced land use planning and resource management. Lake and rural residents are a major economic force in Ontario and certainly around Lake Simcoe. Across the province, they collectively contribute over \$500 million annually in property taxes and, as described in MOE's "Protecting Lake Simcoe" fact sheet in March of this year, cottagers, residents and tourists support about \$200 million of economic activity in the Lake Simcoe area.

One of FOCA's current interests relates to lake planning, which is a comprehensive undertaking for engaging lake communities. Lake planning is a multi-stakeholder process including residents, businesses, municipal representatives and government agencies, the goal being that the plan for the long term will result in the preservation of water quality and of natural and cultural heritage through community stewardship, land use planning, and support of governance and policy approaches. Some examples of the outcomes from our communities that have undertaken this process include the development of shoreline protection policies and practices combined with education for homeowners on best management practices with respect to shoreline buffers, reduction of pollution at the water's edge, maintenance of on-site waste water systems, etc. This type of community-driven engagement, informed by sound science and backed by appropriate public policy, is required for long-term results across large landscapes and across watersheds. The lake plan model is the embodiment of the provincial policy statement, which compels municipalities and stakeholders to identify natural systems and develop policies for their protection.

FOCA and our members have been involved with the Lake Huron Binational Partnership and the Canadian framework for community action, and we've been pleased to see that across this broad and binational watershed it's been a combination of community action, research and policy which serves as a compelling example of broad thinking that could serve this undertaking well on Lake Simcoe. We note that Lake Simcoe currently has no recreation policy and no consistent shoreline management policy, and that despite being one of the most



intensively studied lakes in North America, had no broad-scale plan to save it until the Lake Simcoe protection plan was developed, so we're very pleased to see this before us.

As it stands, planned growth in Simcoe county is in conflict with protecting the health of the lake in the long term. There are a number of development proposals under way or proposed that run contrary to the concepts of preservation of water quality and the protection of natural and cultural heritage. These issues need to be addressed through the act and the plan that it informs if they're going to achieve the objectives of the act. Like our inland and small-lake efforts, the Lake Simcoe act can be a successful model for citizens working co-operatively with government.

In summary, we see the value in a broad and collaborative watershed approach for Lake Simcoe, and it can only be accomplished by following through with the spirit and intent of this bill and engaging landowner interests in a proactive manner. FOCA and our member associations and the people we represent are vested parties in a viable future for our rural and waterfront communities and we respectfully submit our concerns and suggestions for your consideration and use.

I'll turn it over to my colleague and my board member, Roslyn Moore, who's going to follow up with some specific recommendations relating to the act. While we understand that this consultation is specific to the act itself, we understand that the devil is in the details and that the plan that it informs is going to obviously be a big part of how this rolls out on the landscape. So, Roslyn?

1500

**Ms. Roslyn Moore:** Thank you. My name is Roslyn Moore. I don't know if you need to know my address. That was on the deputation notes that were circulated.

I actually have three affiliations. As a board member of FOCA, I have served for four years on the board and am aware of the policies and procedures that affect the planning for the cottage associations across Ontario through that effort.

Second, in my professional work as an environmental planning consultant, I serve as project coordinator to the Alliance for a Better Georgina community mapping project. This is a three-year project producing computer-based community mapping and a website for eight communities in the Lake Simcoe watershed.

Our latest map is called the Historic Lakeshore Communities map, which provides community-identified features and text integrated with local and provincial data, which is promoting conservation of the Lake Simcoe watershed. I just wanted to show this to you. I'm going to actually have a copy for each of you that will be delivered by Annabel Slaight, who's going to be presenting for the Ladies of the Lake. She is the vice-chair of the Alliance for a Better Georgina. This is a two-sided map: environmental and culture heritage. I hope you'll take a good look at it; you'll have one to take away with you.

The significance of this map is that it is a combined community and public agency effort. It's a prime

example of what can happen when you have a consensus-building, multi-stakeholder process to provide a dynamic method of educating the community and effecting public policy. This map has been heralded by the Lake Simcoe Region Conservation Authority computer services department as a huge educational tool, something that they don't have the time or the staff to do with their limited funding. As well, it's serving as a planning tool for the town of Georgina planning department, as a reference tool.

The other piece of my experience that I bring to bear today is as a volunteer on the federal Trent-Severn Waterway system, specializing in local lake planning on Clear, Stony and White lakes in the Kawarthas. I co-initiated a three-year Clear/Stony/White Lake plan, lake planning that Terry just referred to, a community-driven, multi-stakeholder process including representation of four municipalities on our steering committee over a three-year period.

The plan was completed in the summer of 2008. I'm going to leave this with you. This is an example of lake planning. It's 48 to 50 pages of comprehensive data, information and community/government-consensus-built, action-oriented deliverables and outcomes. You might like to take a look at it at your leisure. There's a website that's listed on here: stonylake.on.ca. You can access the plan on that as well.

This past summer, Terry and I invited the Honourable Donna Cansfield, Minister of Natural Resources, to attend our celebratory launch of this lake plan and of a FOCA-supported lake planning process in southern Ontario. We should add that Minister Cansfield is also a cottage resident on Lake Simcoe, so she has a real vested interest in lake planning per se.

During her complimentary public remarks, Minister Cansfield provided a strong message on the importance of shared learnings between the Lake Simcoe process and province-wide lake planning efforts, including the Clear/Stony/White Lake plan process. Specifically, the Lake Simcoe act and plan serve as a blueprint or a template for lake planning in Ontario. A vibrant two-way process for sharing learnings and outcomes between the Lake Simcoe effort and other lake planning efforts will provide enormous benefits to sustainable watershed planning across Ontario.

What I've said is that there should be some mutual learning taking place here. What we'd like to try to do today, if you will, is share the outcomes of our understandings of lake planning to date.

To begin, we believe the act as it currently stands is good, but it must be enhanced or informed by specific details of the plan. As I think Terry said earlier, the devil is in the details.

We understand the plan will soon be released as a draft to the public and it will help to provide clarity and strength to the intent of the act. We do feel that special attention must be paid to the following four sections, which you have a copy of on your desk.

**The Chair (Mrs. Linda Jeffrey):** One minute.



**Ms. Roslyn Moore:** The section on the effect of the act: We hope that there will be a consistent application of new rules set for the development of Lake Simcoe affecting proposals that are currently under consideration and that all projects and development procedures lacking final permits or regulatory approvals will be caught by this legislation effective December 6, 2007.

The term “significant” should be deleted from the phrase “the existing significant threats.” The use of the term is ambiguous and misleading and open to a multitude of inaccurate interpretations, often leading to poor or inappropriate development.

Shoreline protection regulations should be affected by the clause, “The Lieutenant Governor in Council will make regulations,” as opposed to its current statement that says “may make regulations”—we’d like this to be strengthened—and should refer to restrictions applying equally to residential developments, resource development servicing and a restoration plan.

Finally, number 4: The best available science should not deviate from the science advisory recommendations on policy and targets. This is incredibly important to ensure protection for water quality and healthy habitat for wildlife.

I’m just going to summarize with five quick points.

**The Chair (Mrs. Linda Jeffrey):** I’m sorry, you can’t. I gave you your one-minute warning, but nice try.

**Ms. Roslyn Moore:** Okay. I’ll try to insert them into a question.

**The Chair (Mrs. Linda Jeffrey):** You can insert them in an answer, if you’re on top of things. Mrs. Munro.

**Mrs. Julia Munro:** It’s the perfect segue, because I was going to ask you, in the presentation that we just heard, point 3 was with regard to governing structure as recommended by the LSEMS working group. Given the kind of information you’ve provided us with, my question to you is simply, what kind of specific recommendations would you have? I’m assuming that you would support this notion of the working group recommendation of a secretariat, so you can talk further about the plans you were about to speak about.

**Ms. Roslyn Moore:** Exactly. Thank you very much. First of all, the first point is that the terms of reference should be strong and clear, and this should be a multi-stakeholder process which features citizens, business and policy-makers. I would concur with the former speaker Claire Malcolmson’s points about representation on that effort. That’s incredibly important. I don’t think anything’s going to get done if there isn’t a joint effort between citizen groups, science, government and business. It has to be a multi-stakeholder effort.

I think it’s important to continue the researcher dialogue on the components of both successful and unsuccessful planning for lakes in our watersheds. There’s a lot to be learned already from the experience of other lakes in Ontario. I think the Science advisory committee probably is aware of that. I’d like to see that that would

be built into the process—and a sustainable fund for funding.

**The Chair (Mrs. Linda Jeffrey):** That has to be the highlights, sorry. I’m going to have to go to Mr. Tabuns.

**Mrs. Julia Munro:** I like the map, though.

**The Chair (Mrs. Linda Jeffrey):** Good.

**Mr. Peter Tabuns:** Thanks for the presentation. There was a lot of good material in there. When I’ve talked to people in Barrie and the city government about pollution in the lake, they’ve mentioned the number of boats that are on the lake and sewage from those boats. Do you know how many boats are currently estimated to be on the lake on a regular basis and what the impact of 1,000 more boats would be on this lake?

**Mr. Terry Rees:** No.

**Mr. Peter Tabuns:** Darn.

**Mr. Terry Rees:** Probably not great, is my short answer. Land use planning and including the water bodies that exist there is a balance between uses. The recreational benefit that comes from the lake is multi-faceted, and having people on the lake is a positive thing for the local communities, for the economy and for a variety of other reasons. There’s new technology that’s making it better all the time, but we almost never have any undertakings as humans that are completely benign. There’s a limit to all of our activities, though, and planning thoughtfully in advance is one way to manage the limits of our impacts. That’s all I could say to that.

**Mr. Peter Tabuns:** Okay. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Flynn?

**Mr. Kevin Daniel Flynn:** Just in terms of defining a member in your organization—and the reason I bring this up is that I did a tour of about two days and they took me out on the lake to look at the cottages. The cottages I was looking at looked like Conrad Black should have been standing on the balcony and waving back at you. At what point does a cottage become a house or a dream house?

1510

**Ms. Roslyn Moore:** Unfortunately, it’s become a trend on many of the lakes in Ontario that cottages are no longer acceptable for local planning purposes. They don’t meet the bylaws; they have to be full-time, year-round facilities. So you get that mixed together with a—

**Mr. Kevin Daniel Flynn:** Okay. The one image that stands out in my mind is the size of the lawns in front of some of these places that were clearly fertilized—perhaps they even used pesticides—and the slope ran unimpeded to the lake. Twenty years ago, that would have been a sign of a good citizen, somebody who was maintaining their property. Now people were pointing at them, but pointing at them in a bad way.

When you send out anything in an educational format, do you include that type of education about what you can do with shorelines?

**Mr. Terry Rees:** Thank you, by the way, for—this is my world, because “cottage” is a misnomer, really. We’re 50 years old and that’s how you referred to anyone who lived on the water, and it usually referred to a frame



shack that you went hunting or fishing at, so obviously not entirely a good description these days, because we've got all manner of size, shape and form of residential development on the water. Any new developments are generally held to the current building code, which includes sewage works, which is a positive thing these days for anyone who's building new. There's often very little that a local municipality has to directly influence site planning on individual residential lots, so we know there's a strong—it can be a tricky role to play, because there are only so many resources to manage your local bylaws. That's why we feel that environmental stewardship through local community groups and through groups like ours is so very important. It has been a long-standing message that our organization has delivered, that we've each got a role to play in the responsible use and enjoyment of our water, and that the kinds of practices which you described around grading lots and lawns is really not a sustainable, long-term proposition.

Our membership is composed of associations that willingly join us. Their members, in turn, are people who have joined with a community interest in mind. We don't represent every person on the water, and we don't always represent everyone's landscaping preferences, but if we had our druthers we would certainly make our preferences known in terms of what a sustainable waterfront looks like.

**Mr. Kevin Daniel Flynn:** Thanks for the work you do.

**The Chair (Mrs. Linda Jeffrey):** Thank you both very much for being here today.

**Mr. Terry Rees:** Thank you.

## ONTARIO NATURE

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Ontario Nature. Welcome. Thank you for being here today. If you could say your name and the organization you speak for, once you get yourself comfortable. Once you've done that, you'll have 10 minutes. I'll give you a one-minute warning as you get close to the end. Okay?

**Ms. Clare Mitchell:** Great. Thank you very much. My name is Clare Mitchell and I'm with Ontario Nature. If you could just note, Caroline Schultz, our executive director, had planned on being here today. She's had emergency surgery, so she won't be joining us today.

Since its inception in 1931, Ontario Nature, formerly the Federation of Ontario Naturalists, or FON, has been the voice for nature in Ontario. From spearheading the creation of a wilderness area in Algonquin Park in 1934 to working tirelessly for the creation of the Oak Ridges moraine conservation plan in 2001, to pushing for the timely revision of the Endangered Species Act in 2007, Ontario Nature has been nature's champion. Today, our voice is sustained by over 30,000 members and supporters, including a network of over 140 member groups, of which eight are located in the Lake Simcoe watershed. We strive to protect and conserve nature while connecting people with it.

As a partner in Campaign Lake Simcoe, Ontario Nature would like to applaud the Ontario environment minister for the introduction of the Lake Simcoe Protection Act. This act is a tremendous positive step in protecting this beautiful lake and the regional economy at its heart. It also begins to recognize that what happens on the land determines what happens to our lake.

Each Friday morning for the last five years, I have risen at 5:45 a.m. for a run along the shores of Lake Simcoe on Kempenfelt Bay. I have watched the sun burn the early morning mist off the lake, I have felt the very cold winter winds whip across the bay, and I have heard the crunch of the leaves beneath my feet on cool fall mornings. I am not alone during these runs. There is often an abundance of wildlife on and near the lake: other crazy runners and walkers, rowers with their oars silently slicing the glass-like surface of the lake, and people trying to hook the first catch of the day. We are the lucky ones who are able to appreciate Lake Simcoe right in our own backyards.

For those people for whom Lake Simcoe is not in their backyards but who still reap its many ecological benefits, how can we ensure that this public resource is protected now and for future generations? We can do this by ensuring that the commitment of the Ontario government to protect and restore the ecological health of Lake Simcoe happens through a strong Lake Simcoe Protection Act and the resulting plan.

Building on the comments that were expressed in the Environmental Bill of Rights and at the information forums and community partner workshops earlier this year, we are moving in the right direction, but there are still things that need to happen if this act and the plan are to protect Lake Simcoe now and for future generations. To save Lake Simcoe, the plan's principal focus needs to be how we can act now to protect and restore natural areas within the watershed as part of an integrated natural heritage system.

I don't think I can emphasize enough the importance of retaining natural coverage for the health of our lake and the ecological goods and services, like clean air, clean water and its abilities to mitigate climate change that we all benefit from. According to the Lake Simcoe Basin's Natural Capital: The Value of the Watershed's Ecosystem Services report released in June of this year, the ecological benefits provided by the Lake Simcoe ecosystem, a vital part of the world's largest and most diverse greenbelt, are estimated at close to \$1 billion a year.

We need to maintain and restore native woodlands, connect the largest cores of habitat with corridors, allowing wildlife to move between these areas, and maintain the biodiversity found in these areas. For woodlands, we need to focus on the three Cs: composition, connectivity and coverage. We should aim for meeting habitat guidelines developed by Environment Canada, which recommend protecting at least 30% of the forest cover in the watershed, of which 15% should be interior forest



We know there are certain wildlife species, such as the scarlet tanager and oven birds, that rely on interior forest habitat for their survival. All of these measures work towards maintaining the rich biodiversity which is so fundamental to the essential goods and services these areas provide and from which we all benefit.

A stronger emphasis on native forest cover and protecting wetlands in our watershed and beyond is imperative, so we can continue to benefit from acceptable water quality and quantity, as the eight communities in and around the lake do each day.

Other recommendations pertaining to the proximity of the forest patches and forest-type representation should also be followed.

Additional criteria and thresholds suggested in Conservation Guidelines for the Identification of Significant Woodlands in Southern Ontario pertaining to minimum patch size, hydrologic linkages and slopes should also be addressed. Environment Canada's guidelines for wetland and riparian habitats should also be met as part of an extensive and ecologically functional natural heritage system.

In clause 26(2)(a) of the act, I am concerned that "areas of land or water adjacent or close to the shoreline of Lake Simcoe" is too restrictive. I and Ontario Nature would like it to read that "land within a 100-metre distance to the lake, shoreline, ... tributary of Lake Simcoe, as defined in the plan, and informed by scientific advisory committee's recommendations." Also, the requirement that all new riparian riverine or shoreline activities result in protection of and improvement to fish habitat must be included.

There are 43 species at risk in the Lake Simcoe watershed, from monarch butterflies to Blanding's turtles to the southern flying squirrel to American ginseng. If we continue to destroy threatened wildlife habitats, as we are doing now, we will leave a legacy of adding species to this list.

All of the strong natural heritage policies I wish to see are possible and are the intent of the act as referenced in Bill 99. The act's purpose is "to protect and restore the ecological health of the Lake Simcoe watershed," so let's ensure we do just that.

The act must be the vehicle to deliver a protected natural heritage and agricultural system as promised by the growth plan for the greater Golden Horseshoe. Again, what happens on the land determines what happens to our lake.

The act's principal focus must concentrate on how we can act now to protect and restore natural areas within the watershed as part of an integrated natural heritage system.

Healthy growth means protecting key natural features given the value of the services they provide. The benefits of integrating the value of nature into decision-making are clear: sustainable urban growth, balanced communities, and increased health and quality of life for Ontarians.

All developments or projects lacking final permits or regulatory approvals must be caught by regulation, be

subject to the act and/or plan, and meet the environmental and development standards outlined in the plan. This is an environmental act and, as such, issues other than phosphorus loads must be addressed in development approvals.

**1520**

It must be explicit that the Lake Simcoe protection plan's shoreline development restrictions apply to residential redevelopments, resort development and servicing, and include a shoreline restoration plan. We need to curtail ill-planned urban growth around our lake, because planned growth in Simcoe county is in conflict with the protecting of the health of our lake.

There needs to be a stronger emphasis on improving land use planning, both within the watershed and in adjacent areas where development pressures are the greatest. The Lake Simcoe watershed is home to more than 350,000 people, and Places to Grow indicates that the population living within the watershed will nearly double by 2035. Our land use planning needs to plan for this and work together to ensure that the future growth and development are sustainable.

It is crucial that the plan works with and strengthens the growth plan for this area. Although the province may be reluctant to include population and development caps in the Lake Simcoe watershed, these issues may need to be addressed through the plan and act if they are going to achieve the objectives of the act. It must lay out a plan for assessing and achieving appropriate levels of growth within the watershed and adjacent areas on the west side of our lake, where development pressures are the greatest and the watershed is the narrowest. It must lay out a plan for how we can assess whether this level of growth is appropriate, how to accommodate future growth while putting the needs of our lake and its surrounding ecosystems first, and how to ensure infrastructure critical to protecting our lake, such as water and sewage treatment, keeps pace with growth in the most ecologically sound way possible to benefit current residents and future residents.

This requires comprehensive and interactive long-term planning to ensure the fundamentals are in place now so our lake can thrive today and continue to be a public resource in the future.

**The Chair (Mrs. Linda Jeffrey):** Ms. Mitchell, you have one minute. Okay?

**Ms. Clare Mitchell:** Yes.

Approximately 40% of the lake's shoreline is governed by the greenbelt development restrictions, leaving the rest of the watershed unprotected. The act must end the paradox of one lake, two policies.

To touch on a couple of points that need to be included in the plan:

It must not allow significant shoreline alteration. Naturally vegetated buffers should be a minimum of 100 metres wide on shorelines and rivers.

Policies covering the above targets must be identified as designated policies: natural cover targets, permeable surface minimums, setbacks from watercourses, wetlands and the lake, and shoreline policies.



Adequate and sustained funding must accompany the plan, which needs to be reinforced with a practical enforcement regime. Unless the government corrects these long-standing problems of funding and enforcement, progress and positive results will be difficult to achieve.

What brings the need for a strong Lake Simcoe Protection Act home for me is two-fold. I work for Ontario Nature, which, along with the other members of Campaign Lake Simcoe, is committed to seeing a strong Lake Simcoe Protection Act and plan in place—that sends a clear message to our government to protect our lake now and for future generations. At the same time, when it's not snowing in Barrie and I stand in my driveway, I can see the lake, and each and every day I reap many of the benefits the lake offers.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Our first questioner will be Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you for that presentation. In one of the earlier presentations, it was indicated to us that, if the recommendations from the scientific advisory committee weren't followed, it would be very difficult to make sure that this lake was healthy and sustainable. Is your organization in agreement with that position?

**Ms. Clare Mitchell:** That's a very good question. Could you repeat it?

**Mr. Peter Tabuns:** An earlier presentation by Campaign Lake Simcoe said that the recommendations of the scientific advisory committee were quite important to ensure that the lake was actually protected, that what they had seen coming out around the act was not as protective and, in fact, went in a different direction. I asked if the protection of the lake depended on implementation of the scientific advisory committee recommendations.

**Ms. Clare Mitchell:** Yes. Premier McGuinty, when he spoke in Barrie, when he made the first announcement, said that we need to have sound science. I think that if you don't have that sound science—we know that the advisory committee has been taking all that science that's been around for ages and putting it all together. I think we need to make those decisions based on the best available science that we have.

**Mr. Peter Tabuns:** Okay. Thank you.

**Mr. Kevin Daniel Flynn:** Thank you, Clare, for your presentation. One of the things your organization is quite famous for is its magazine. I used to get it; I don't know what happened.

**Ms. Clare Mitchell:** I didn't bring any copies with me today. Sorry.

**Mr. Kevin Daniel Flynn:** I probably didn't pay for it; that's probably why I didn't get it.

**Ms. Clare Mitchell:** I'll give you a membership brochure before I leave.

**Mr. Kevin Daniel Flynn:** There we go. That was a shameless plug to get me one.

*Interjection.*

**Mr. Kevin Daniel Flynn:** That's right. But on the topic of shared learning, that's been raised so far, and there's a really positive atmosphere that surrounds this whole project. There's a partisan nature to it, but this is

one of the more positive exercises I've seen. What sort of feedback are you getting from your members? Are they excited about the fact that we're trying to clean up a whole lake?

**Ms. Clare Mitchell:** They are very excited. And I'm fortunate, in my position, that I work directly with the naturalist clubs—so over 140 naturalist clubs across the province, of which eight are in the Lake Simcoe watershed—and they're behind this. I think naturalists inherently have a connection with nature, so they're sort of the converted. They're already on side and they are very willing to support the Lake Simcoe Protection Act, but they're also going out into their communities. So it's not just a naturalist issue now; now it's a bigger issue. I talked briefly about ecological goods and services and the idea that we all benefit from clean water, from clean air, mitigating climate change. I think it's very well received and it's seen as a bigger issue. It's multi-stakeholder. It's not just the naturalists and not just the environmentalists; everybody understands the value of it. I think if we have a strong act in place and a strong plan in place, then it sets the precedent for what might happen in other places in the province.

**The Chair (Mrs. Linda Jeffrey):** Mr. Barrett?

**Mr. Toby Barrett:** Clare, thank you for your presentation on behalf of the FON. We have the Norfolk Field Naturalists down our way. That was established maybe in the 1950s.

You talk about population, and of course the goal of naturalists to protect and to restore this particular environment. But I think of the population of Ontario or Lake Simcoe in 1931 and the population now, and you're projecting a population of 700,000 people by the year 2035. Do you think there's a hope to actually achieve your goals with that kind of population growth? Secondly, does FON, Ontario Nature, have a position on what I consider out-of-control population growth in this part of the world?

**Ms. Clare Mitchell:** I think at Ontario Nature we realize that this population growth is going to happen regardless. We can't control the population growth, and I think with that understanding, we want to work within that context and help to make sure that, when growth does happen in areas, there are natural areas which are protected. We have a huge strategy right now called our greenway strategy, which is about connecting natural areas to the cores and the corridors. I think we're aware of the situation, and our approach is to work within that. So, what are the policies that we can help either provincial government or municipal government do so that, when this inevitable population growth occurs or as it's happening, there are measures in place to reduce the environmental impact?

**Mr. Toby Barrett:** So you feel it's not possible to control population growth?

**Ms. Clare Mitchell:** No. I think it's inevitable that the population is going to keep on growing. They need somewhere to go, and the most natural areas are some of the areas that they are attracted to.



**Mr. Toby Barrett:** That's where they go.

**Ms. Clare Mitchell:** But I think also, if you understand and appreciate nature—and that's a lot of the work that we do through our magazine and with outreach and education: getting people to understand and appreciate, and helping them to understand what actions they can take, whether they support green builders, whether they support green legislation, so that there's something that's being done there to minimize their impact.

I spend a lot of time down by the lake because I live in Barrie, and there are so many people out there using the lake. There are always people out there, whether they're rollerblading or biking or swimming or sailing. It's a very well used resource. I think if people understood a lot more about how important it is and how to protect it, then they would. I think people really appreciate it, but they don't necessarily know what role they can play. I think that's part of the work that we do at Ontario Nature: helping them to understand so that they can then influence local and provincial governments.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today. And ignore the shameless plug for the magazine.

## EARTHROOTS

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Earthroots. Good afternoon. Welcome. As you settle yourself down, if you could state your name and the organization you speak for before you begin; then you'll have 10 minutes. I'll give you a one-minute warning as you get close to the end. Welcome.

**Mr. Josh Garfinkel:** My name is Josh Garfinkel. I'm the senior campaigner for Earthroots.

First off, I'd just like to say good afternoon to the Chair and members of the committee. I'm really grateful for the opportunity to speak in this forum. I'd like to say how encouraging it is that the government has taken this really critical progressive step of introducing legislation for Lake Simcoe. We're really enthused that the Ontario provincial government sees the incredibly urgent need for affording meaningful protection to this vital watershed.

1530

Earthroots is a non-profit environmental advocacy organization that works to protect wilderness, wildlife and watersheds through research, education and action. We've been around for over 20 years. We focus on Ontario-based issues and we represent approximately 15,000 supporters across Canada. Our organization is in full support of Campaign Lake Simcoe.

Once again, it's a privilege to speak with you about Bill 99, the Lake Simcoe Protection Act. We're very pleased with the overall direction the act has taken and the commitment that the province has made to this vital part of southern Ontario. We feel that the act is an extremely important step towards addressing some of the environmental problems that have plagued Simcoe but, like any piece of environmental legislation, there are certainly areas that need some work.

One area that is a cause for concern is subsection 3(4), the effect of the act; also subsection 5(1), the effective date—"The Lake Simcoe protection plan takes effect on the date specified in the plan."

The fact that we do not yet know how transition regulations will be treated is extremely concerning. Just to stop and clarify, when we say "transition," we mean development applications that were ready and processed prior to the plan. That needs to be stressed. This is a really essential component that needs to be addressed by our government.

If people continue to see automobile dependence and unsustainable suburbs sprouting up in Simcoe county over the next 10 years, they will rightfully be skeptical as to whether or not your government has thoroughly dealt with the environmental issues that are central to a healthy Lake Simcoe. It is essential that you anticipate the public response to this apparent contradiction and establish strict development regulations accordingly.

As a campaigner for Earthroots, one important part of my job is conducting research on the Oak Ridges moraine. Our partnership with Ecojustice, formerly Sierra Legal Defence Fund, has actually led us to focus on a controversial development application called West-hill. This proposed golf course and condo development on the moraine in Aurora is in violation of the Oak Ridges Moraine Conservation Act and has put the effectiveness of this legislation in question. There is legal uncertainty surrounding this case due to its transitional status, as its application had not received approval when the Oak Ridges Moraine Conservation Act was introduced.

The inherent problem with transitional developments is that they fall into a legislative grey area and they cause great confusion within the public. So the government must be careful and strategic about transition regulations. People will rightfully question what the term "protected area" actually means if environmentally harmful developments continue to be built on vital landforms and ecologically sensitive watersheds that are, allegedly, protected.

To be consistent in the application of new rules set for development on Lake Simcoe, we need the act to affect development proposals that are actually in the pipeline right now. All developments or projects lacking final permits or regulatory approvals must be subjected to the regulation. It must meet the environmental and development standards outlined in the plan.

This is an environmental act and, as such, there's a wide spectrum of ecological and hydrological issues that need careful consideration when addressing development approvals. It is imperative that the Lake Simcoe protection plan be effective as of December 6, 2007, the date of the announcements of the interim phosphorus regulation.

Another area that needs to be strengthened is subsection 5(1): "Contents of Plan ... The Lake Simcoe protection plan shall set out the following." After examining the phrase, "the existing significant threats and potential significant threats to the ecological health of the Lake



Simcoe watershed,” we anticipate problems with the soft, ambiguous language. We have legitimate concerns that the use of the word “significant” insinuates a level of threat that is open to interpretation which, therefore, could be used to disregard threats not deemed to be “significant.”

Furthermore, in reference to subsection 26(2), it is of utmost importance that Premier McGuinty uphold his assertion that this act and the plan are going to be based on the best available science. It is critical that the recommendations of the provincially appointed scientific advisory committee be adopted. In particular, the committee’s 100-metre naturally vegetated buffer recommendation—number 36—must be followed.

Between the Great Lakes, the Oak Ridges moraine, abundant lakes, rivers and streams, Ontario is blessed with plentiful fresh water. Unfortunately, this has led our government and citizens alike to often act as if our water is an infinite resource. Unchecked urban sprawl and mismanagement of water resources in southern Ontario created a clear need for protection that the Ontario government could not ignore. The Oak Ridges Moraine Conservation Act and the Greenbelt Act were created to curb urban sprawl and protect vital watersheds. Earthroots feels a sense of pride to have been an important part of lobbying for the moraine conservation act. We were thrilled when our government introduced the landmark greenbelt legislation.

With that being said, there are activities that are allowed to take place within the greenbelt that completely compromise the most important objectives of the plan and undermine the very notion of a protected area. The fact that golf courses and aggregate operations are permitted in ecologically sensitive areas of the greenbelt is a fundamental problem that is completely at odds with the most integral goals of this highly lauded act. Since the Lake Simcoe Protection Act is modelled on acclaimed laws that already exist in Ontario, notably the Niagara Escarpment plan and the Oak Ridges Moraine Conservation Act, it is imperative that our government learn from the mistakes and omissions from these pieces of legislation.

Hydrological integrity is emphasized in the Oak Ridges moraine conservation plan as an overriding priority, yet water-intensive operations such as aggregates and golf courses are allowed to take place within many parts of this key land form. Earthroots and Ecojustice have recently completed reports entitled Ontario’s Water Hazard, a case study that examines golf courses on the Oak Ridges moraine and how they are routinely allowed to flout rules surrounding the Ministry of the Environment’s permit-to-take-water process. With the inordinate number of golf courses in ecologically sensitive watersheds and the Ministry of the Environment’s lack of enforcement, it comes as no surprise that places such as Newmarket and Aurora have been experiencing declining groundwater levels for years—for over 10 years, specifically.

If hydrological integrity were interpreted in a more direct way, there would be a moratorium on any new or

expanded golf courses in the greenbelts and much stricter practices surrounding the sustainable allocation of groundwater resources in these sensitive areas. If one of the purposes of the greenbelt was to protect prime farmland, the government would not allow water-hungry golf courses to be constructed over land with such important soil. Furthermore, the government must be cognizant of the fact that golf courses and aggregate operations are contributing factors to farmers and homeowners experiencing water shortages.

To bring this back to the Lake Simcoe protection plan, one of the key tenets is to protect the ecological and hydrological integrity of a protected area. Let’s think about what these terms mean. This sounds impressive, and it appears that the government is going in the right direction toward affording strong protection. However, due to the ambiguity of the terms “ecological” and “hydrological integrity,” it is unclear how these critical concepts will hold up when put to the test. It is absolutely essential that the government address the urgent need to protect this vital watershed and prohibit any new golf courses or any new aggregate operations in this protected area. In the case of expanding an existing golf course, it is essential that the Ministry of the Environment conduct cumulative impact assessments, environmental impact assessments and regularly monitor water levels.

To conclude, we have our concerns regarding ambiguous language, the treatment of transitional development applications and the allowance of certain damaging land uses within sensitive areas. However, we do feel that the government is on the right track. If the recommendations of the scientific advisory committee are adopted, and our call for strong, meaningful ecological protection is answered, we will stand resolutely and appreciatively with anyone who supports Bill 99. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you. My first questioner will be Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you, Josh, for your presentation. You talked a lot about things that would influence land use. I was hoping to hear something about what is actually going on in the lake, especially with sports fishery and commercial fishery, that type of thing. Has Earthroots taken a look at what’s actually happening under the water? I know we’ve had a depletion in the dissolved oxygen levels, that type of thing. We’re seeing a little bit of a comeback in some species, but certainly it looks like it needs a lot more work. Have you taken any position on what’s actually happening in the lake itself?

**Mr. Josh Garfinkel:** We have. We’ve looked at different studies in terms of uses that actually impact the health of the lake. It’s tough to have only 10 minutes for a presentation. I try to focus on issues that I work on directly, in terms of the moraine and greenbelt, in trying to relate the importance of learning from our mistakes in terms of how the government’s going to develop the plan for the Lake Simcoe Protection Act.

We’ve looked at the motorboat issue most closely because we work a lot on provincial parks issues, and motorboats have been an issue in certain provincial



parks. I would have liked to talk a little more about ecological carrying capacity in relation to motorboats but, again, that was about nine and a half minutes.

1540

**The Chair (Mrs. Linda Jeffrey):** Mr. Barrett.

**Mr. Toby Barrett:** You called for a moratorium on any new expanded golf courses within the greenbelt, but the greenbelt is only part of this watershed, if I recall from looking at the maps. Do you mean the whole watershed, or just the greenbelt part?

**Mr. Josh Garfinkel:** I guess we would call for it on the whole watershed, but in terms of the wording within the Oak Ridges moraine conservation plan and the greenbelts, I was trying to point to the ambiguity and the lack of clarity regarding the term “hydrological integrity,” and the fact that water-intensive operations are leading to a lot of water shortages is something that we really need to learn from and act upon really fast.

**Mr. Toby Barrett:** You mentioned Newmarket and Aurora, with the groundwater declining and that. Is that because of golf courses, or could it be from washing cars and watering lawns and other things—

**Mr. Josh Garfinkel:** It's multi-faceted. I didn't want to make this presentation just about golf courses, but I do think that they're one of the leading contributing factors, in terms of how much water they use. I think they could be a lot better in terms of alternatives to that much groundwater being used.

**Mr. Toby Barrett:** I don't golf, but I just wondered. Are there gravel pits in those—

**Mr. Josh Garfinkel:** Yes. There are a number of things that are contributing to it, but based on the case study that we completed, the golf courses are allocated about 50% of the town of Aurora's water supply. So, based on those numbers alone, that's pretty staggering in terms of what that means to citizens of the town and—

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you for the presentation. Could you speak a bit to the impact of boats on the lake—motorboats, sailboats, sewage from the boats—and the potential impact of 1,000 more being put in place at Big Bay Point?

**Mr. Josh Garfinkel:** Without getting too much into the weeds, in terms of the science of the motorboats, undeniably study after study has continually pointed to the fact that Lake Simcoe is in jeopardy. The health of the lake is at serious risk. I understand that tourism dollars are important in this part of Ontario, but that cannot override the health of the lake. The lake is in so much trouble already. I believe there are about 7,000 motorboats right now on the lake. Another 1,000 motorboats would have a devastating impact, and the government really needs to reconsider what this means in terms of how this is going to jeopardize the health of the lake. We have a lot of concerns about that.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today.

ANNE GOLDEN

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is West Oro Ratepayers' Association, Anne Golden. Welcome. Thank you for being here today. Please say your name and the organization you speak for, and once you do, you'll have 10 minutes.

**Dr. Anne Golden:** Actually, I'm speaking more or less for me. I am an active member of the West Oro Ratepayers' Association, but I'm actually speaking as someone who has been on Lake Simcoe since I was three years old.

**The Chair (Mrs. Linda Jeffrey):** Good. I'm going to give you one minute's notice when you get close to your 10 minutes, okay?

**Dr. Anne Golden:** I'm not going to take 10 minutes.

I want to thank you for the opportunity to speak to you in support of Bill 99, the Lake Simcoe Protection Act. I actually have been cottaging on this lake since I was three years old, more than 60 years, almost 40 of which have been in Oro-Medonte. I am an active member of an active ratepayers' group, the West Oro Ratepayers' Association, which has some 300 members.

In these six decades plus, I have seen the quality of the lake decline. I can remember when we used to fish in the lake, eat the bass, eat the lake trout, without concern. Now, every year, I see more beaches closed during the summer, I see more weeds due to phosphates, more sprawling subdivisions sprouting up, and real risk that Lake Simcoe will not provide the kind of enjoyment to future generations that I have had.

This government has demonstrated that it understands the need to check urban sprawl, preserve community identity and ensure green space, while it provides for growth in a responsible way through Places to Grow, the greenbelt, the Clean Water Act, the provincial policy statement etc., and it has received praise within Canada and globally for this approach. The whole key to it, though, is implementation. I am not an expert on Bill 99. Other deputants, as the one before me did, spoke to, for example, the problem with language, where it's too vague. They will provide the details and the specific amendments to the act that are needed, and specific improvements to the plan. I'm here today to support their efforts.

Mine is a two-page, little presentation, so if you want to follow along on page 2, hopefully the plan will do the following:

Establish specific targets for phosphorus, for natural cover, and what they call surface impermeability—in other words, concrete docks and breakwaters—that follow the advice of the scientific advisory committee.

Not allow significant shoreline alteration. So-called riparian corridors, which are naturally vegetated buffers, must be set at a minimum width, and they recommend that width.

This is very important, this next point. Ensure that shoreline policy is even-handed. It is not even-handed now. If my family and my neighbours cannot build a



cement dock—I can tell you, we can't move a rock without permission from provincial and federal authorities—but a developer can carve a 30-acre hole in the shoreline for 1,000 marina slips, that is not even-handed.

This leads me to comment on Big Bay Point, as an example and for itself. This particular development is offensive. It's offensive due to its scale—thousands of fractional ownership units—and the enormous basin that's going to be created for the most massive marina on a lake already overloaded with motorboats.

If the numbers that the last deputant gave you are correct, you're talking a 15% or 20% increase in the number of boats from a single development. It's not right. This is inconsistent with any plan to save the lake.

Given all the efforts that you're making through legislation so enlightened, why would the government grandfather this development and allow this particular application to be an exception to the standards you are now establishing under the Lake Simcoe protection plan?

I'm hoping that you will make the effective date of the Lake Simcoe protection plan December 2007—I can't stress to you enough; this is really why I'm here—because if you don't, you're going to be undermining your plan before you start. It must have an early effective date and a period of transition. I have heard developers refer to the land north of the greenbelt as the Wild West of development. Without clear transition rules, without stopping the grandfathering of projects that lack final permits or regulatory approvals, you're going to be undermining your whole purpose.

I'm hoping that the new plan will include regulations that apply equally to marinas, resorts and residential developments.

One more point that I want to stress—two more points. I'm hoping that you'll make these regulations in some way non-appealable to the Ontario Municipal Board.

This isn't in my presentation, so if you'll just bear with me, I want to tell you a very quick story.

WORA was created to fight a particular development called the UCCI development. This would have created a golf course adjacent to the lake, with all of the pollutants running down. It was a bad development. Thank goodness, the province stepped in and declared a provincial interest, which was a very enlightened thing to do, and it stopped that development. We were successful.

This is a rare story, but because of that experience, I know what it takes to fight a development. I know that the developers have the deep pockets; the ratepayers don't. Unless you've been involved in one of these issues, you have no idea of the amount of energy and commitment—four years, on our part—and huge sums that we had to raise.

What's happening right now in Big Bay Point—as you know, there's the case before the OMB. If this, what really amounts to a SLAPP suit, is successful—you're all aware of this, I'm hoping—you will basically destroy citizen participation at this level. So you need to do something that makes the Lake Simcoe act impervious to

the appeals of developers who have endless supplies of money—endless supplies.

The reason we ended up at the OMB is that the local township, Oro township—this was specifically said to us, so it's public—said that the reason they passed this development, which they knew was unwise, was they didn't want to have to spend the money before the OMB. So it was passed by the local township although it was inconsistent with the county plan, and it was kicked up to the OMB and it came upon the citizens to have to fight it.

We can't continually fight it. And now that you've got them—your approach is so right. You're doing everything so right. I guess what I'm saying to you is, please don't undermine it by not being crystal clear about what is unacceptable development outside settlement areas. You may also know that in my past life I chaired the report on the future of Greater Toronto and other work. I'm not an official planner, but even in my work at the Conference Board of Canada I've had a lot of experience with research and generally good planning. This government is doing the right thing. I'm here to say, please don't undermine yourselves by not enforcing it and implementing it in the right way. That is my message: Provide adequate funding, an enforcement regime that tracks and monitors to make sure that the strategy is implemented.

1550

Don't doubt that Lake Simcoe is in trouble. Experts have given you details on phosphorus loading and species at risk. We know that there are development projects and proposals in the pipe. Thirty years ago, you may not know, I was the director of research for Dr. Stuart Smith; some of you remember. I did a study for him on Lake Simcoe. At that time I learned about phosphorus loads, more than I ever thought I wanted to know—everything you'd ever wanted to know about phosphorus. Really, at that time it was roughly one third agricultural runoff, one third municipal sewage—which we've done some things to improve except in a storm—and urban development, all of these kinds of subdivisions. I suspect it's still that kind of division, but we have now reached a tipping point.

I'm here with two messages. First, congratulations—thank you for the leadership that you are showing with Bill 99—and a plea. My plea today is that you make it effective. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Our first speaker today is Mr. Barrett.

**Mr. Toby Barrett:** Thank you, Ms. Golden. Just maybe picking up on your work with urban trends: You talk about the Wild West, kind of beyond the greenbelt boundary. It's too bad that the committee room doesn't have a map of what we're talking about here, but I understand that—

**Dr. Anne Golden:** North of the moraine, and north of Keswick—basically Simcoe county.

**Mr. Toby Barrett:** It is not in the greenbelt.

**Dr. Anne Golden:** Right.



**Mr. Toby Barrett:** Yes. So there are going to be 700,000 people living here, we've just been told by one of the presenters, by I think the year 2035. That's double what's here now. I think we're assuming they're going to leapfrog over the greenbelt and end up right around Lake Simcoe?

**Dr. Anne Golden:** Not all 700,000, because when I did the study on the GTA, we projected that the growth within the GTA—in the five regions comprising the GTA—you're going to see huge growth there. That will probably be the bulk of the growth, but there will be growth. The good news is that the government's plan allows for responsible growth. We have to have responsible growth—growth that's within designated settlement areas; growth that is more intense.

One of the studies I did for the GTA was the cost of sprawl. The study we did is still definitive, I'm proud to say—done by Pamela Blais. We found that if we reduced sprawl and intensified it and did better planning and land use, and integrated it with transportation, you would save \$20 billion in 20 years—back-end loaded, but roughly \$1 billion a year, money that we need for schools and hospitals.

**Mr. Toby Barrett:** Will this legislation stop that sprawl in an area that is not protected by a greenbelt—

**Dr. Anne Golden:** No, this legislation will protect the lake from being destroyed by inappropriate land use.

**Mr. Toby Barrett:** But not sprawl.

**Dr. Anne Golden:** It won't stop sprawl, but it will—well, yes, partly, because it will strategically encourage, in fact it will require, development to go within settlement areas, and because the growth is not sprawling out but is more intensified, you can have better transportation; it is less sprawled out. When I use the word “intensified,” I don't mean crowded. It's not unacceptable densities; it's very comfortable densities. It means where you have liveable communities. More and more work is being done on this. There is almost nobody that disagrees that this kind of development is better for communities, and in this case, better for the natural resources, better for the lake. Right now, the lake is at a tipping point, no question.

**The Chair (Mrs. Linda Jeffrey):** Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you very much for your presentation. I really appreciate it. You're familiar with the area. You're familiar with the province. You call for implementation of this act, effective date to be December 6, 2007. I am sure that there will be objections to that date being set. Do you see practical problems with setting it at December 6, 2007, that a government will not be able to overcome?

**Dr. Anne Golden:** No. I've looked at governments make decisions on a whole host of things, from income trusts to—governments make decisions with ramifications that are hugely felt. Here the ramifications would be fairly narrow. I don't know what's in the pipeline or what has received preliminary versus final approval. I'm not an expert on that. But there may be a few developers who are unhappy. Because the ratepayers can't speak together

with their unhappiness because they're dissipated around, I think that the positive impact will far exceed—it will take courage, because you will hear from those who aren't happy.

I know you're getting encouragement and international recognition for the enlightened approach that's being taken towards planning. I'm just saying that by making it December 2007, you will in fact prevent the undermining of the kinds of projects that are going forward. I know that Big Bay Point has received preliminary approval. I can't imagine how it will really succeed in meeting the environmental conditions, of which, by the way, the Ministry of the Environment has been doing a fabulous job. I'm talking about the level of effort, of vigilance, that it takes on the part of the ratepayers. It's exhausting and costly and beyond the capacity of many. That's what makes the playing field so tilted. But in this case it's not just the ratepayers that will suffer; it's all of us who depend on Lake Simcoe. What a treasured resource, and it's already going downhill. I don't know the stats, but I can tell you that every year the beaches are closed etc.

**The Chair (Mrs. Linda Jeffrey):** Thank you.

**Dr. Anne Golden:** Sorry, I've taken too long.

**The Chair (Mrs. Linda Jeffrey):** It's okay.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mr. Mauro.

**Mr. Bill Mauro:** Thank you, Dr. Golden. Some of the background material we have points out that about 15% to 20% of the P loading that's going into the lake is a direct municipal contribution to that. As I understand it, there are about 12 or 14 municipalities in the area that are contributing to that P loading. I guess I'm wondering: As someone who's here representing, I'm told, a ratepayers' association, if the municipal councils in that area are supportive, what are their positions on what we're doing? Have they passed individual resolutions supporting this work? Are they willing to look at their water rate structure, their sewage rate surcharges, those kinds of things? Are they upgrading their municipal infrastructure so that they can impact on the P loading that's going into the lake? Is there any work going on at the municipal level that would be supportive of what we're trying to achieve here provincially?

**Dr. Anne Golden:** Fair question. I can only speak in terms of Oro-Medonte. Sandy Agnew, who I believe will be making a presentation, is our representative there. They're doing very enlightened things with respect to waste management. It's beyond even what the city of Toronto is doing. They've just gone really green. It's a rural municipality, so that's all on septic. They have done the dye test and everything like that. They're very rigorous on septic standards. We're not on sewers, so I don't think that's what you're referring to. As far as the other municipalities, I think many of them—Barrie is growing so fast, and there probably needs to be infrastructure improvement. I don't know whether the municipalities are or would be eager to take their fair share of it. Certainly I'd be in favour of all that.



**The Chair (Mrs. Linda Jeffrey):** That was a wonderful presentation. We've run out of time. Thank you very much.

**Dr. Anne Golden:** Thanks very much for this opportunity.

**The Chair (Mrs. Linda Jeffrey):** You're welcome.

#### GEORGIAN COLLEGE/MOON POINT HOMEOWNERS ASSOCIATION

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Georgian College/Moon Point. Mary O'Farrell-Bowers?

**Ms. Mary O'Farrell-Bowers:** Yes. Hi.

**The Chair (Mrs. Linda Jeffrey):** Welcome. As you get yourself settled, if you could say your name and the organization you speak for, and then you'll have 10 minutes. I'll give you a one-minute warning as you get close to the end. The floor is yours.

**Ms. Mary O'Farrell-Bowers:** My name is Mary O'Farrell-Bowers, and I'm here in two capacities. I'm the coordinator for the environmental techniques and technology program at Georgian College, and Georgian College is the educational institution in the watershed of Lake Simcoe. The second reason I'm here is that I live in the Wild West, I work in the Wild West, and I've had the life experience of challenging a decision by a municipal council right up to the Ontario Municipal Board. I'm lucky to say that I ended up coming out without a lawsuit. I will explain that as I go through my presentation. I'm living proof of the need for this act, and I'm going to speak to that. Can we start the time now?

**The Chair (Mrs. Linda Jeffrey):** Just go. We'll see how it goes.

**Ms. Mary O'Farrell-Bowers:** Okay.

**Mr. Kevin Daniel Flynn:** Smooth.

**Ms. Mary O'Farrell-Bowers:** I know. I can't help it. I've had to learn these skills going through the trenches.

Georgian College is the leading community college in environmental education. We have both a one-year certificate and a three-year technology diploma with several university articulations. Our students are working with Environmental Defence Canada, the Rescue Lake Simcoe Coalition and our faculty to educate communities and the general public about the dire health of Lake Simcoe. We have built it into our curriculum. We recently hired Claire Malcolmson as a faculty member—Claire spoke earlier—in order to have up-to-date knowledge on the health of Lake Simcoe and to ensure that our students are educated in that capacity.

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I am a member of the Moon Point Homeowners Association. We led a charge, up to and including an OMB hearing, to stop a 14-lot estate development on one of the last remaining pieces of undeveloped natural shoreline on the north shore of Lake Simcoe. This was a three-year battle that included deputations at the township of Oro-Medonte, the county of Simcoe and, finally, an OMB appeal. We laboured for three years: fundraised and

fought this development, which was ultimately approved by the Ontario Municipal Board. This fight garnered local, provincial and national support; however, we still lost, and this parcel of property, now in the process of being destroyed, clearly reminds me—when I look at the chronological age of the panel—of the song by Joni Mitchell, which we're probably all familiar with, *Big Yellow Taxi*, with the lyrics "paved paradise" and "took all the trees and put them in a tree museum." It is truly sad indeed, and I'm not being facetious at all. This is why we need the Lake Simcoe Protection Act; because if you would see the before and the after, it is devastating.

I sincerely congratulate this government for introducing the Lake Simcoe Protection Act, and I must say I'm very proud of Garfield Dunlop, who is the Simcoe North MPP, for his leadership. Garfield actually agreed to testify at our OMB hearing in support of our application. I am supportive of the act, but I have some areas of concern that I just wanted to bring to your attention:

(1) The targets for phosphorus, surface impermeability and for natural cover must follow the advice of the scientific advisory committee.

(2) It must not allow significant shoreline alteration. Naturally vegetated buffers should be a minimum of 100 metres wide on shorelines and rivers.

(3) The shoreline policy must be even-handed. If I can't build a stone dock and I live on Lake Simcoe, but a developer can carve a 30-acre hole in the shoreline for 1,000 marina slips or develop a 14-estate home lot on an environmentally sensitive piece of property that abuts a provincially significant wetland, these, for example, are not even-handed.

(4) Policies covering the above targets must be identified as designated policies: natural cover targets, setbacks from watercourse, wetlands and the lake, and shoreline policies.

(5) The act and plan must state clearly that regulations apply equally to marinas, resorts and residential developments.

(6) Adequate and sustained funding must accompany the plan, which needs to be reinforced with a practical enforcement regime. Unless we correct these long-standing problems of funding and enforcement, progress and results will be difficult.

The plan must have, and I've heard it spoken about before, an early effective date and clear transition, rules and must not allow grandfathering of projects lacking final permits or regulatory approval.

I have a few specific changes requested to the act:

Under subsection 3(4) and clause 5(1)2, the effective date, I want the Lake Simcoe Protection Act to be effective on December 6, 2007, the date of the announcement of the interim phosphorus regulation.

Under subsection 26(1), shoreline protection, I propose that you delete the clause, "The Lieutenant Governor in Council may make regulations," to be replaced with, "The Lieutenant Governor in Council will make regulations," and that these regulations will be in place at the coming into force of the plan. Furthermore, it must be



explicit that the Lake Simcoe protection plan shoreline development restrictions apply to residential redevelopments, resort developments and servicing, and include a shoreline restoration plan.

Subsection 26(2), dealing with shoreline protection: I propose that, recognizing that the wildlife relies on healthy habitats and wildlife is an integral part of ecological health, the science advisory committee's 100-metre naturally vegetated buffer recommendation, which is number 36 from their July 7 report, should be followed. For this reason, in clause 26(2)(a), I'm concerned that the "areas of land ... adjacent or close to the shoreline of Lake Simcoe" is too restrictive. It should read, "Land within a 100-metre distance to the lake, shoreline,... tributary of Lake Simcoe, as defined in the plan and enforced by the scientific advisory committee recommendations."

If the recommendations of the scientific advisory committee are adopted and our call for a maximum ecological protection is answered, we will stand resolutely and appreciatively with anyone that supports this bill. I really do want to thank you for taking this critical leadership on behalf of the lake, but I want to tell you, because I think I have a few minutes left, our sad tale.

At a personal and local level, we as taxpayers of the province of Ontario and the township of Oro-Medonte, and as local neighbourhood associations supported by the larger community and renowned environmentalists, should not have to give up three years of our life to fight a development that had been approved at both the municipal and county council level on one of the last remaining undeveloped parcels of land on Lake Simcoe. As mentioned in the introduction, this pristine piece of natural heritage abuts onto a provincially significant wetland and experts believe is the home of the Jefferson salamander, a species at risk.

At a personal level, as a Moon Point homeowners' representative who signed two of the three appeals, I should not have to check with my lawyer and I should not have to check with my insurance company to establish if I will lose my home and other assets my husband and I have worked hard for 25 years to develop. I should not be concerned that I will lose my home. I should not be faced with constant threats from lawyers who have big pockets when going through an Ontario Municipal Board hearing.

As taxpayers in the province of Ontario, we should not have to organize silent auctions and community fundraisers and seek additional donations to cover the costs incurred because our belief, supported by environmentalists and Environmental Defence Canada, that this type of irresponsible, unnecessary and totally non-environmentally sound development was approved. What we need is a law that will ensure that local, municipal and provincial governments have the teeth to stop this very disturbing and destructive pattern of unacceptable development on our beautiful Lake Simcoe. There is such an urgent need for the Lake Simcoe Protection Act, one that will be a model for other jurisdictions in the future, one that the

residents in the province of Ontario will truly support and, finally, one that will stop the degradation of Lake Simcoe and its watershed.

If I were to push it a bit further, I hope that after you successfully pass this legislation, you'll start to consider SLAPP legislation because, having gone through this terribly brutal process, it is unacceptable that people in the province of Ontario have to deal with this.

The lake is in trouble. If you have any doubts about the scale of the challenges facing Lake Simcoe, allow me to provide you with a few examples: 7% to 10% impervious surface area—

**The Chair (Mrs. Linda Jeffrey):** You have just less than a minute.

**Ms. Mary O'Farrell-Bowers:** Okay. Well, I'll just end then by saying that I really congratulate you on this piece of legislation. I hope that you have the courage to pass it. I look forward to answering any questions that you may have. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mr. Tabuns.

**Mr. Peter Tabuns:** Mary, thanks for the presentation. I understand that the Lake Simcoe conservation authority supported the Moon Point development.

**Ms. Mary O'Farrell-Bowers:** Yes.

**Mr. Peter Tabuns:** Are you concerned about having more citizen representation on governing bodies here to ensure that those sorts of things don't happen?

**Ms. Mary O'Farrell-Bowers:** Very concerned, yes. I think it would be a great idea, and—

**Mr. Peter Tabuns:** No, no. Go ahead.

**Ms. Mary O'Farrell-Bowers:** I won't go there. I don't know who's in the room.

**Mr. Peter Tabuns:** Well, it doesn't matter if they're in the room or not. It's on the record.

**Ms. Mary O'Farrell-Bowers:** I think a lot of people are pressured by developers and their lawyers, and that could include conservation authorities, and our previous speaker spoke about local municipal governments.

**Mr. Peter Tabuns:** Right.

**The Chair (Mrs. Linda Jeffrey):** Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you, Mary, for that presentation.

The committee process allows people to bring forward ideas and recommendations as to what they'd like to see implemented, so thank you for yours. But what really intrigues me more than anything else is that your post-secondary educational institution is within an area now that's become a bit of an example of how an initiative should take off from the grassroots level, move up into government and have a favourable sort of decision made. What sorts of opportunities or possibilities are we going to see coming out of Georgian College now as a result of this experience? Will anything change in the curriculum?

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**Ms. Mary O'Farrell-Bowers:** Actually, because of this experience, I ended up being—we received a lot of media attention. I'm educated with a bachelor of social work and a master's of education, so I don't purport to be educated in environmental science. But I was given the



opportunity to take over as coordinator of the environmental programs because of my experience. We did end up having Claire Malcolmson come to Georgian College and we co-presented on what actually did happen at Moon Point. We have a student organization called GEAR, which is made up of students right across the college system who were active, working with the Rescue Lake Simcoe Coalition and Environmental Defence and some of their initiatives. One of them included going out on the coldest day of the year last winter to fishing huts and providing education to ice fishers. So we have done a lot. We have changed our curriculum. We have an environmental law course where this example is embedded into it. We have advocacy courses, where students understand—it is a science program, these programs, but there is a large role for advocacy, and advocacy not only as community groups like the one that I belong in but also advocacy for environmental people who work in the field. It's a juggling act.

**Mr. Kevin Daniel Flynn:** That's great news. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mr. Barrett.

**Mr. Toby Barrett:** Thank you, Mary. This is legislation to minimize the impact of rapid development, and I know much of your presentation is about development. This is an environmental bill. This is why I'm wondering if we've maybe got the wrong type of legislation. This is not the Oak Ridges moraine legislation. This is not greenbelt legislation. This is not designed for the province to have power over urban development. This is an environmental bill. Did we bring in the wrong type of bill?

**Ms. Mary O'Farrell-Bowers:** No, absolutely not. I encourage you to work on other types of legislation; I encourage having the greenbelt extended up into the wild Wild West. That's something that can be looked at as well. However, we need environmental legislation in order to protect Lake Simcoe, which will then result in municipalities having to follow that legislation when looking at plants and developments.

**Mr. Toby Barrett:** So regardless of that, the population is going to double.

**Ms. Mary O'Farrell-Bowers:** Yes, I understand that.

**Mr. Toby Barrett:** All of it is inevitable, and this legislation will do nothing to stop that, from what I can see.

**Ms. Mary O'Farrell-Bowers:** No, and I understand that, but it will stop the degradation of development around Lake Simcoe, and that's a great thing. I also sit on the Oro-Medonte planning advisory committee and am fully aware of development applications that come forward. If there were a "protect Lake Simcoe act," then that would be part of the decision-making when looking at whether that development should be approved or not. So it is critically necessary.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today. We appreciate your passion.

## KIDS FOR TURTLES ENVIRONMENTAL EDUCATION

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Kids for Turtles Environmental Education. Welcome, Mr. Bowles. I know you've been sitting here for a little while, but I'll go through my preamble again. If you could say your name, the organization you speak for, and once you've done that you'll have 10 minutes. I'll give you a one-minute warning as you get close to the end. We look forward to your presentation.

**Mr. Bob Bowles:** Good afternoon. My name is Bob Bowles. I live in Orillia, Ontario, on the north shore of Lake Simcoe. I'm a volunteer executive director of Kids for Turtles Environmental Education, which is a non-profit organization with charitable status and 250 members. It has a mandate to educate the public about the environment through education and workshops on species.

Thank you very much for the opportunity to speak with you this afternoon. It is something we usually don't do—we usually tend to make presentations at schools, community organizations, special events, summer camps, that sort of thing—but since we feel so strongly about the protection of Lake Simcoe, I've travelled down here this afternoon to take this wonderful opportunity to make my brief presentation to you.

It's my pleasure today not only to speak for Kids for Turtles, as their executive director, for the protection of Lake Simcoe, but also as a professional environmental consultant who's been through—I've been around for a while. I've heard the speakers before me. I've been there with them. I've been through a couple of OMB hearings as an expert witness. I'm usually out in the field, out in the wetlands, up to my waist in water and not sitting in a boardroom like this.

Let me start by saying that the Lake Simcoe Protection Act is a good one. It's late in being implemented. It's something we've needed—this movement—before now. I would have liked to have seen this move this way five years ago, because the pressure on Lake Simcoe has greatly increased in that time frame. I'm out there every day; I'm seeing the changes, I'm seeing the species. I know that our lake is in trouble; there's no doubt about that.

First, I would like to see the Lake Simcoe act extended to include—and I was hoping there was a map here this afternoon showing where the greenbelt area is, showing where the Lake Simcoe watershed is. Just north of Lake Simcoe is the smaller Lake Couchiching. The water flows from Lake Simcoe through the narrows into Lake Couchiching. It doesn't make sense to me to draw a line across Orillia and say, "This is the watershed," when Lake Couchiching really needs protection as well. I can sit in our offices and look to the south to Smith's Bay and Lake Simcoe, turn my chair and look to the north to Portage Bay and Lake Couchiching—a very short distance. It's really the same watershed. I've witnessed ill-planned leapfrog developments moving north, again from



the greenbelt protection area to our area. Lake Couchiching and Lake Simcoe are greatly under development pressure right now. I would have liked to see that extended. And if we extend it, there's the Black River watershed to the north of that—of course, the Trent-Severn, but really Lake Couchiching is a small area, and that should be looked at.

One thing I'm concerned about is that municipalities should not have the ability to surpass the restrictive standards of those in the provisional Lake Simcoe protection plan but should have the ability to create more restrictive standards if they see fit.

Shoreline protection is one of my biggest concerns on Lake Simcoe, since many species of wildlife at risk in the area live along this shoreline area. Species at risk are one of our main focuses, as are invasive species, in Kids for Turtles Environmental Education. We tend to do a lot of workshops on species at risk. We have very few natural shoreline areas remaining around the lake at this time. The act must not allow significant shoreline alterations, and natural vegetation buffers in this riparian zone must be a minimum of a hundred metres wide. These buffers are so important, as I'll cover later with the surface permeability and the wetlands. Wetlands are acting as a filtering for the health of the lake. The streams coming into Lake Simcoe are helping: keeping the water temperature low, offsetting the effects of eutropification. So this 100-metre buffer is very important to maintain, and that shoreline protection is really paramount in the fact of keeping that 100-metre buffer.

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Construction of roads and housing developments lead to surface impermeability, causing phosphorus and other nutrients to wash into the lake, and we know what happens: These nutrients cause algae bloom and eutropification. Now 15% of the surface area in the watershed is impermeable, and this figure is due to rise greatly in the next few years as we see more areas of development. These natural buffer areas would greatly reduce this from happening.

The act and the plan must protect these shorelines in protection regulations for all. Restrictions for the small lakefront owner who wants to make adaptation to his dock should be just as restrictive, if not more, to a major housing or marina development along the lake. Again, that's been touched on before by other speakers, but it's so important to have an even playing field with little chance of changes and appeals to the act. The act must clearly state that regulations apply equally to marinas, resorts and residential developments.

The act needs to recognize special habitats for wildlife and species at risk, such as mature woodlands and vernal pools. These habitats are obligate for many species at risk. The Jefferson salamander that Mary touched on is in the watershed and it needs these vernal pools to reproduce. Without those vernal pools, it will not survive; it'll go extinct. When we got into the Moon Point OMB hearing, there was very little understanding of vernal pools by the developer. These have to be recognized, and

they're recognized by the scientific advisory committee and have to be protected.

The act also must have provisions for funding for enforcement of these legislative measures in the protection act. You can put in the greatest act going, but if you don't have the funding to enforce those acts, then they're going to lose their teeth and not be effective. It must clearly state who will enforce these restrictions. Without these measures, the act will lack teeth for the protection of Lake Simcoe.

There are now more than 43 species at risk that live in the Lake Simcoe watershed, and you can expect that number to increase every year. Since I've been doing environmental inventories, spotted turtles are now an endangered species—very hard to find. These species are declining rapidly, so the species-at-risk list will increase in the next few years. It's very important that those habitats are protected for those species.

**The Chair (Mrs. Linda Jeffrey):** Mr. Bowles, you have one minute left.

**Mr. Bob Bowles:** Okay.

Planned growth in Lake Simcoe needs to have high regard for the species at risk in the lake.

The recommendation of the scientific advisory committee for the protection of these species by targets for phosphorus, surface impermeability and natural coverage needs to be adopted. They're good recommendations and they need to be adopted.

The Lake Simcoe protection plan is long overdue and needs to be, again, effective back to December 2007, the date of the announcement of the interim phosphorus regulation. We've covered that before, so I won't touch on that.

Environmental groups and members of the public must have representation on the Lake Simcoe coordinating committee in order to achieve transparency, credibility and co-operation to make this act effective. Without that public representation, you won't get buy-in. There should be equal representation from industry, government and the public at large.

If all these committee recommendations are met and the maximum ecological protection implemented, enforcement of the act will be effective in protecting Lake Simcoe and the habitat and the species at risk within the watershed. Thank you very much for allowing me to make this presentation this afternoon and for your leadership in taking this critical step forward to protect our lake.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mrs. Mitchell.

**Mrs. Carol Mitchell:** From the name that you were presenting under, Kids for Turtles Environmental Education, I was curious about what you do with kids to make them aware of endangered species, species at risk, in the work that you do. I also have another question.

**The Chair (Mrs. Linda Jeffrey):** Better be quick.

**Mr. Bob Bowles:** Kids for Turtles Environmental Education brings the past—turtles have been around for 250 million years and saw the dinosaurs come and go.



They have not had to adapt. We have only been around for two million years, on the other hand. There are eight species of turtles in Ontario; right now six of them are species at risk, and a seventh one will be added. This is the message we bring to the schools, that we really have to protect them. Turtles are our sort of marquee, but we do dragonflies, butterflies, all reptiles and amphibians. That's the whole message: Children are the policy-makers. The children of today will be sitting where you are tomorrow, and that they have a sound understanding of the environment and how it's changed is the whole purpose of Kids for Turtles.

**Mrs. Carol Mitchell:** Just a little, wee, short question: Is a recommendation that you're making on the date with regard to the interim phosphorus regulation that the act begin on that day? I don't know if you can answer this question, but my question to you is about your inventory environmental concerns and how it affects species at risk. In fact, when that framework came forward—what's the difference today? Has the phosphorus load improved from that date?

**Mr. Bob Bowles:** The phosphorus load hasn't really significantly improved. Some of the phosphorus loading is coming from the atmosphere. It was mentioned earlier that there was a rebound. We know that lake herring is in big trouble, and lake trout and lake whitefish. It was mentioned that there is some rebound on that. There is very little rebound on that, and I think we're a little premature to say that it's changing. I haven't seen a great increase on that, and I think that's why the act is so important. We need to get that momentum going and start turning things around.

**Mrs. Carol Mitchell:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Ms. Munro.

**Mrs. Julia Munro:** I have a couple of questions with regard to the material you gave us. In the bullet point about shoreline protection, you indicate that we have very few natural shoreline areas. Can you give us any idea what that is? Are we talking 10%, 50%, 80%? Do you have any idea?

**Mr. Bob Bowles:** We went through this in the OMB hearing for Moon Point at that time. That was even before the Big Bay Point development. I'd hate to give you a figure, Ms. Munro, but we did study a satellite study at that time, and we are talking about 15% of the shoreline being natural—less than 15% now, more like 10%.

**Mrs. Julia Munro:** The reason I asked the question is because in the next part you talk about how important it is to have the minimum of 100 metres. I was trying to get a sense of what potential area can be covered by the 100 metres, because in your next point you talk about road construction and housing developments. There you say, "Now, 15% of the surface area in the watershed is impermeable, and this figure is due to rise greatly in the next few years. These natural buffer areas would greatly reduce this from happening." I was trying to get a sense of, if you've got 15% that's impermeable now, and you have 15% where you have natural vegetation, how we are

going to match up, then, having more areas with the buffer.

**Mr. Bob Bowles:** I'm speaking from the north perspective right now. If we go down to the southern part of the lake, we know a lot of that area has been developed. The development is starting at the north now, and there's still room to put restrictions in to keep those buffers.

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Now, in places like Barrie and Orillia, to be practical, we know that it's going to be very hard to get that buffer through those areas, but certainly in between it would be very easy to put in legislation to maintain that buffer so that, as we get more development behind that area, more surface impermeability, you have those wetlands. Wetlands are so important for filtering and buffer areas—

**Mrs. Julia Munro:** I understand.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Tabuns.

**Mr. Bob Bowles:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Wait.

**Mr. Peter Tabuns:** You've got one more.

**The Chair (Mrs. Linda Jeffrey):** Sorry, sir, one more.

**Mr. Bob Bowles:** Oh, sorry.

**Mr. Peter Tabuns:** That's okay. Don't worry. Thanks for your presentation, by the way. I understand that you gave testimony about endangered species when the Moon Point development was going forward; is that correct?

**Mr. Bob Bowles:** Yes. I was an expert witness.

**Mr. Peter Tabuns:** And I understand that the conservation authority disagreed with your approach?

**Mr. Bob Bowles:** Disagreed with my approach personally?

**Mr. Peter Tabuns:** Yes, with the testimony you were giving about endangered species.

**Mr. Bob Bowles:** Well, I wasn't aware of that. I'm quite prepared to defend everything I said at that OMB hearing. I feel that there are vernal pools in those areas that needed to be protected, that weren't protected and will be developed now.

**Mr. Peter Tabuns:** So do you feel that the legislation that's in place right now for the protection of species is adequate?

**Mr. Bob Bowles:** I feel that there are new species at risk being added. Dragonflies, for instance, are good indicators of water quality. We have S1 to S3 species, and we're doing a lot of work on dragonflies right now.

They weren't in the past—for instance, Moon Point, when we were there, they weren't considered at all. So no, there's not enough protection for species at risk, but the Ministry of Natural Resources, MNR, is now putting more emphasis on those species at risk, adding more species to it, and re-evaluating which should be moved from special concern up to threatened, to endangered.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Mr. Bowles. We appreciate your being here today.



## BUILDING INDUSTRY AND LAND DEVELOPMENT ASSOCIATION

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the Building Industry and Land Development Association, Mr. Vaccaro.

Welcome. Make yourself comfortable. After you are settled, if you could say your name and the organization you speak for, and you'll have 10 minutes. I'll give you a one-minute warning when you get close. The floor is yours.

**Mr. Joe Vaccaro:** Good morning, Madam Chair and members of the legislative Standing Committee on General Government.

My name is Joe Vaccaro, vice-president of the Building Industry and Land Development Association, BILD. I am pleased to be afforded this opportunity to present the industry's views with respect to Bill 99, the proposed Lake Simcoe Protection Act.

BILD supports the stated purpose of the proposed Lake Simcoe Protection Act: "To protect and restore the ecological health of the Lake Simcoe watershed."

Before I speak specifically to Bill 99, I would like to take this opportunity to outline the rigorous land use planning regulatory regime that has been developed in the province of Ontario, and significantly strengthened by the action of the current government, that serves to govern land use decisions in the watershed.

These include the Oak Ridges Moraine Conservation Act; Oak Ridges moraine conservation plan; Sustainable Water and Sewage Systems Act, 2002; Nutrient Management Act; the Planning Act—including Bill 26, the Strong Communities (Planning Amendment) Act, Bill 51, the Planning and Conservation Land Statute Law Amendment Act—provincial policy statement; Ontario Heritage Act, Greenbelt Act; greenbelt plan; Places to Grow Act; Places to Grow, growth plan for the greater Golden Horseshoe; Endangered Species Act; Clean Water Act; South Georgian Bay-Lake Simcoe source protection plan.

Furthermore, it's important to understand that local plans and policies that inform land use decisions in the watershed include the County of Simcoe Growth Management Study; Intergovernmental Action Plan for Simcoe, Barrie and Orillia; Ontario regulation 170/06, Lake Simcoe Region Conservation Authority; draft Simcoe area growth plan; official plan review, Simcoe county; Planning for Tomorrow, York region; Growing Durham, Durham region; and Liveable Peel, Peel region.

Recent technical studies that inform land use decisions in the watershed include:

- Watershed Report Card, 2008: A report on the health of the Lake Simcoe watershed;

- Assimilative Capacity Studies for the Lake Simcoe Watershed and Nottawasaga River;

- Natural Heritage System for the Lake Simcoe Watershed;

- Lake Simcoe Basin Wide Report, March 2008;

- Benthic Macro-invertebrate Sampling and Analysis of Lake Simcoe;

- Lake Simcoe Hydrodynamic and Water Quality Model;

- Assimilative Capacity Studies: CANWET Modeling Project Lake Simcoe and Nottawasaga River Basins.

The above list of recent changes to the legislative and policy framework and recent, ongoing technical studies that govern and inform land use decisions within the Lake Simcoe watershed is not intended to be an exhaustive list of tools available to approval authorities within the watershed. Instead, the list is intended to identify the transformation of the land use planning system that has occurred over the last several years in an effort to address issues that have been identified by the public and stakeholders across the province and within the watershed.

BILD supported the Premier's announcement on July 6, 2007, that the government would develop a Lake Simcoe Protection Act. In addition, in response to questions from reporters, the Premier stated that the new act, if passed, would not apply to existing approvals, respecting the long-held principle that land use planning legislation and regulation should be applied on a go-forward basis.

As stated earlier, BILD supports the stated purpose of the bill: to protect and restore the ecological health of the Lake Simcoe watershed. BILD members have an inherent interest in protecting and restoring the ecological health of the Lake Simcoe watershed and, through the development application approvals process, have made significant and substantial investments in infrastructure and restoration efforts, which in turn have played an important role in the continued rehabilitation of the lake and the watershed.

Although BILD supports the stated purpose of the act, we are concerned the act does not recognize or reflect the work undertaken by the Lake Simcoe environmental management strategy. As many of the committee members would know, the LSEMS is comprised of representatives from the Ministries of Agriculture, Food and Rural Affairs, Environment, Energy and Infrastructure, Municipal Affairs and Housing, and Natural Resources, as well as Fisheries and Oceans Canada, Environment Canada, the regional municipalities of York and Durham, the county of Simcoe, the cities of Barrie and Orillia, the towns of Bradford West Gwillimbury and Innisfil, the townships of Oro-Medonte and Ramara, the Chippewas of the Georgina Island First Nation and the Lake Simcoe Region Conservation Authority.

BILD, along with the Ontario Federation of Anglers and Hunters, Ladies of the Lake/the WAVE and Rescue Lake Simcoe Coalition, have been engaged through the LSEMS working group and through various partnerships. These partnerships have served in improving the ecological state of the lake.

Minister Gerretsen recognized the success of the LSEMS in his introduction of the Lake Simcoe Protection Act on September 22: "With hard work and commitment by many—phosphorus levels have been reduced



from more than 100 tonnes per year down to 67, and the water quality has seen some level of improvement.” BILD agrees with the minister that, over the last eight years, as both public sector, institutional, tourism and population growth have increased, the LSEMS program was successful in lowering the phosphorus levels in Lake Simcoe.

The minister goes on to say, “But there’s still much more work to be done,” and BILD equally agrees with the minister. There is much more work that needs to be done, and the LSEMS structure and success provide a valuable blueprint for future work in the watershed.

I thought it important to provide the committee with some information regarding the LSEMS and the successful partnership before I comment on the governance structure outlined in sections 18 and 19 of the act.

Bill 99 enables the establishment of a Lake Simcoe science committee and a Lake Simcoe coordinating committee through an appointment by the Lieutenant Governor in Council, supported by the Ministry of the Environment. In BILD’s opinion, these committees may actually restrict the involvement of qualified and significant stakeholders and, more importantly, limit the information sharing that is at the core of the LSEMS partnership success.

To build public confidence, it is important that the governance structure be accountable to the local community, transparent in the appointment of members to the committees, and easily understood by the public with a single point of contact, and that it integrate the mandates and requirements of other organizations and agencies serving the Lake Simcoe watershed. The governance model must also serve to promote information sharing, co-operation and coordination of effort.

It’s also critical that the proposed governance structure does not encourage duplication and overlap. Again, BILD would suggest that the work of the LSEMS provides a blueprint.

BILD is concerned that these aspects of governance are not currently reflected in the legislation and would recommend that the legislation be amended to reflect and acknowledge the need for the scientific committee to outreach and consult with the scientific practitioner community and those who work within the watershed.

Section 18 is silent on the membership and composition of the scientific committee, providing no ministerial rationale for those appointments nor identifying the necessary expertise required to serve the committee. To that point, the membership of the scientific committee should include representatives from the scientific practitioner community, such as aquatic scientists, along with scientific expertise to address methods of restoration, better engineering of storm water and sewage treatment or planning and building sustainable communities. Instead, the scientific focus is restricted to identification and quantification of problems.

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With subsection 18(2) charging the scientific committee to provide advice to the minister on potential

strategies to deal with threats, it should include experts with practical experience who have a history of providing solutions related to Lake Simcoe.

BILD recommends that an amendment be made to section 18 regarding the membership of the scientific committee, similar to what is found in section 19 regarding the coordinating committee, requiring representation on the committee from members of the scientific practitioner community that serves Lake Simcoe, and experts in the areas of municipal waste water treatment, storm water management and sustainable development.

Similarly, the coordinating committee should also explicitly include stakeholder representation from experts in the areas of municipal waste water treatment, storm water management and sustainable development. At the current time, none of these disciplines is specifically required.

Again, if the coordinating committee is charged in subsection 19(2) with coordinating implementation of the plan, identifying and resolving issues that arise in relation to the implementation of the plan and providing advice to the minister on any issue or problems related to the implementation of the plan, then it is essential that the necessary local expertise is reflected in the coordinating committee.

BILD recommends that paragraph 4 of subsection 19(4) be amended to include representation from the development industry, along with the stated agricultural, commercial and industrial sectors.

BILD is suggesting that the recommended amendments to the committee structures will serve to create a greater sense of local accountability, transparency and ultimately co-operation in identifying threats and potential strategies and solutions as we work together to protect and restore the ecological health of the Lake Simcoe watershed.

Without some amendment to the current committee structures, the concern is that the decisions made by the committees become disconnected from the local authorities and the practical realities in the watershed.

Given that the Lake Simcoe Region Conservation Authority currently undertakes many activities pursuant to the Conservation Authorities Act that are described in Bill 99, it is unclear how establishing another Lake Simcoe watershed focused organization—the new temporary Lake Simcoe plan project team in the Ministry of the Environment—will discourage duplication and overlap.

**The Chair (Mrs. Linda Jeffrey):** Mr. Vaccaro, you have a minute left.

**Mr. Joe Vaccaro:** This concern speaks to the need to integrate existing mandates and structures serving the watershed. The danger in centralizing the implementation of the plan at the provincial level is the loss of local accountability through existing authorities, and ultimately the breakdown of information sharing.

Bill 99 does not address funding. In fact, the bill, as currently drafted, does not compel the provincial government to provide funding of any kind. Respectfully, I would say to the provincial government that the plan



cannot be downloaded on the local municipalities. BILD has recognized and applauded the government for up-loading services from the municipalities. Funding from the province is critical in dealing with existing threats to the lake and what is currently in the ground and in the water.

Transition: Paragraph 4 of subsection 5(2) appears to enable the provincial government to establish policies in the plan to amend existing approvals. On July 6, 2007, the Premier stated that a Lake Simcoe Protection Act and plan, if passed, would not be retroactively applied to existing approvals. As the Premier indicated, it would be unreasonable and unfair to municipalities and to the applicants.

BILD recommends the legislation include language that supports the comments made by the Premier on July 6 so as to provide clarity and consistency in the application of the legislation. This should also serve to focus the shared efforts of stakeholders as we move co-operatively to implement the plan.

In closing—

**The Chair (Mrs. Linda Jeffrey):** It had better be a short closing, Mr. Vaccaro, please.

**Mr. Joe Vaccaro:** Absolutely. I would like to end my presentation with a quote from Gord Miller, Environmental Commissioner of Ontario, speaking about the success of the LSEMS program at the Lake Simcoe environmental management strategy conference held in Barrie on October 20, 2005. In reference to the fact that recent Ministry of the Environment studies had shown improved water quality in Lake Simcoe over a period of very strong economic growth and increased development, Mr. Miller stated, “You have decoupled economic growth from environmental deterioration.”

BILD believes that, by addressing the concerns raised in our deputation today, the provincial government can allow this trend to continue.

Thank you very much.

**The Chair (Mrs. Linda Jeffrey):** Beginning with Mrs. Munro—are you asking a question?

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** I don’t know. Mr. Barrett, okay?

**Mr. Toby Barrett:** Further to your presentation on governance—and thank you for the brief; it’s put together nicely—how do you envision the governance? I can think of different models. For example, there’s the Niagara Escarpment Commission, which is a provincial body, maybe top-down—I’m using your lexis on here. We have an existing conservation authority. What do you envision as the ideal? Do you envision a new body, or do we go back to some of the existing organizations?

**Mr. Joe Vaccaro:** BILD has supported the LSEMS working group’s document supporting the new governance model. Really, the key is to take advantage of what’s already in place in Lake Simcoe, take advantage of those resources and that institutional information. The need to recreate a body, especially a body which is from the province down—you lose that disconnect between

local planning authorities and the ultimate need for transparency and accountability when decisions are made.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you for your presentation. I understand that there are 10 or fewer significant areas of untouched shoreline on the lake. Given that reality, unless you have statistics to the contrary, it strikes me that the government does need to act very strongly to protect what’s left and does need to go back to have an implementation date in December 2007. Given that reality, why would your organization oppose strong, quick action to protect what is left?

**Mr. Joe Vaccaro:** In terms of your comment, I don’t have the exact figures. What I would say is that there’s a basic principle when we deal with issues around land use planning, and that principle is that regulations and legislation come forward on a go-forward basis. They’re not built on the idea of retroactivity. That is the principle that has been applied through a number of different pieces of legislation and regulations coming forward, and it’s a principle we support.

**Mr. Peter Tabuns:** My understanding is that in most cases we’re not talking about projects—I’ll take Big Bay Point, that’s got all its approvals, environmental and otherwise. If it doesn’t have all its approvals, then I don’t see any reason for us not to act—in fact, make sure it doesn’t go forward. Are you saying that a project that has partial approvals should be treated as if it’s got its permits and all the licenses and certificates it needs to go ahead?

**Mr. Joe Vaccaro:** I would ultimately leave that decision to the government, but at the end of the day, the reality is that it’s on a go-forward basis. The Premier has commented in the media and to reporters, indicating that projects that are currently in the pipeline—obviously, there will have to be some sort of distinct cut-off of what that means—where significant investment has been made and, more importantly, where end users will be affected, have to be considered. Traditionally, it has been on a go-forward basis.

**The Chair (Mrs. Linda Jeffrey):** Mr. Flynn?

**Mr. Kevin Daniel Flynn:** Thank you for your presentation. Part of the beauty of the process so far is that it has brought together groups that would traditionally be seen as adversaries in other forums. And it wouldn’t come as any surprise to you to know that your group is often viewed as the guys with the black hats. I’m just wondering, as this process has unfolded and the same groups have been sitting around the table, what has BILD learned from the process so far? Is there anything you know about this area, or anything you know about the people or the passion they bring to this area, that you didn’t know before this process started?

**Mr. Joe Vaccaro:** Well, let me provide this opportunity to explain from the BILD perspective. We are a volunteer membership-based organization. Builder members are not required to join us; they do so of their own



volition. Our role in advocating for our membership is to advocate for good planning, good public policy and good environmental standards; that's our role. Speaking to specific applications and such is not really our role.

Having said that, I think what we've learned, as an organization and through our various chapters—we have a chapter specific to Simcoe—is that information-sharing is the key. There is a need to share information, to validate that information and to move that information forward. As I said earlier in my comments, I would suggest that landowners, whether they be homeowners or developers, all have an intrinsic interest in ensuring that the lake is safe and that the ecological health of the lake is improved. Municipalities and the authorities in the area share that concern, and there's a process we work through to move these applications forward. That's sort of how I would put that together.

**Mr. Kevin Daniel Flynn:** Thanks.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today.

#### LAKE SIMCOE REGION CONSERVATION AUTHORITY

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Lake Simcoe Region Conservation Authority: Ms. Hackson and Ms. Wood.

I know you've been here for a while, but I'll still go through my preamble. Welcome. Get yourselves settled, be comfortable, and when you are, could you state your names, if you're both going to be speaking, and the organization you speak for. Then you'll have 10 minutes. I'll give you a one-minute warning before you get to the end. Thank you for being here.

**Ms. Virginia Hackson:** Thank you, Madam Chair, and thank you to the committee.

Good afternoon. I know you've had a long afternoon. I'd like to introduce myself and thank you for the opportunity to speak regarding Bill 99, the proposed Lake Simcoe Protection Act, and to congratulate the government on its leadership on this important matter.

My name is Virginia Hackson. I am a third-term councillor with the town of East Gwillimbury, in the region of York. I have been a member of the Lake Simcoe Region Conservation Authority for eight years, and I am currently in my second term as chair. In addition, I sit on the executive committee of Conservation Ontario. I would also like to introduce our chief administrative officer, Gayle Wood, who is with me today. We also have board member Councillor Sandy Agnew, from Oro-Medonte, in the audience.

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The Lake Simcoe Region Conservation Authority's board of directors is on record as supporting Bill 99 and has been actively involved in providing comments on the government's discussion paper, participating in public consultations and providing input on the Environmental Bill of Rights registry regarding the bill's first reading.

I am here today representing the conservation authority to address three key issues which we believe will strengthen the proposed act, acknowledge the role of the conservation authority and avoid duplication of effort.

The Lake Simcoe Region Conservation Authority has a long and distinguished history in the protection and restoration of Lake Simcoe and its watershed. Created in 1951 under the provincial Conservation Authorities Act, the Lake Simcoe Region Conservation Authority has expanded seven times to a jurisdictional area of 3,573 square kilometres, which virtually encompasses the drainage basin around Lake Simcoe, as noted in Bill 99. We have been involved in watershed planning and restoration for decades and want to acknowledge and support the government's steps toward legislating a watershed protection plan. The LSRCA, under sections 20 and 21 of the Conservation Authorities Act, with the financial support of the province and its member municipalities, has developed an 80-member interdisciplinary team of staff who have been recognized worldwide as leaders in integrated watershed management. Countries such as China and Australia have bestowed the conservation authority with special awards for excellence in watershed management.

Legislating watershed planning and management for the protection of Lake Simcoe is strongly supported by the conservation authority. Section 4 of Bill 99 states the objectives of the Lake Simcoe protection plan. The conservation authority strongly believes that subsection 4(j)(ii), which lists provincial legislation that provides protection for the watershed and lake, should include a reference to the Conservation Authorities Act. Inclusion of this reference would help ensure that implementation of the plan will avoid duplication of programs such as watershed planning, scientific research, monitoring, natural heritage protection, stewardship and watershed reporting which have been successfully delivered by the conservation authority for decades.

Clause 27(1)(a) of the proposed Lake Simcoe Protection Act allows the Lieutenant Governor in Council to make regulations regarding the participating municipalities for the Lake Simcoe Region Conservation Authority for the purpose of this proposed act. This would enable the LSRCA to have jurisdiction over the entire watershed, including the portions of the cities of Orillia and Kawartha Lakes which are now not currently within the authority's jurisdiction. It is strongly recommended that this be accomplished through an appropriate amendment to the Conservation Authorities Act for the following reasons.

Presently, the LSRCA has an 18-member board of directors constituted under section 2 of the Conservation Authorities Act to conduct the authority's business. Further, as the lead agency for the south Georgian Bay-Lake Simcoe watershed region, established under the Clean Water Act, the authority leads an additional board of 24 members to oversee source water protection planning on behalf of the province. Clause 27(1)(a) of Bill 99 may indeed result in the creation of an additional board



of directors to deal specifically with the proposed Lake Simcoe Protection Act. Substituting the proposed clause 27(1)(a) with a subsection that directs an equivalent amendment to the Conservation Authorities Act is recommended in order to reduce confusion and increase efficiencies of watershed processes.

The Lake Simcoe Region Conservation Authority would also like to highlight the potential for overlap between the proposed shoreline protection regulations under section 26 of the proposed act and the existing section 28 regulations under the Conservation Authorities Act.

The LSRCA has received provincial approval of regulation 179/06, which regulates activities in and adjacent to rivers or stream valleys, large inland lake shorelines, hazardous lands, watercourses and wetlands. It is extremely important that existing and proposed regulations do not result in confusion to the public or duplication of process.

The LSRCA participates in our umbrella organization, Conservation Ontario. It is important to acknowledge our support for the submission of our colleagues from Conservation Ontario, which will be presented later today.

We look forward to working with the province on the Lake Simcoe protection plan and ensuring that the plan recognizes where the conservation authority can play a leading and supportive role to the province. Given the authority's history as the facilitator of the Lake Simcoe environmental management strategy partnership—a 17-year partnership between the federal government, the province, municipalities, the LSCRA and the community—we look forward to providing our expertise to the province to protect and restore Lake Simcoe and its watershed. We would also encourage the government to build upon the success of this 17-year partnership as we move forward to legislate a new Lake Simcoe Protection Act and plan.

It has been a pleasure for the Lake Simcoe Region Conservation Authority to participate in and support the government in this initiative. The conservation authority supports Bill 99 and would ask for favourable consideration of the comments outlined in our submission.

**The Chair (Mrs. Linda Jeffrey):** Mr. Tabuns, you have the floor.

**Mr. Peter Tabuns:** Thank you for coming and presenting today. It's my understanding that your conservation authority supported the development at Moon Point and didn't oppose Big Bay Point. We've had a number of deputants today talking about Big Bay Point—I think a 100-acre clear-cut and 30 acres of artificial lake that has been dug out, and people consistently saying that what happened there is inconsistent with, and in fact undermines, the act that's under consideration. Do you agree with the earlier deputants, and if you do, why didn't you take the steps necessary to protect Lake Simcoe?

**Ms. Gayle Wood:** Madam Chair, would you permit me, as chief administrative officer, to answer that ques-

tion? I'd like to clarify the conservation authority's role under the Planning Act. We are one of many commenting agencies on municipal developments. The ultimate approval authorities are the municipalities themselves. We concurred that both the Moon Point and the Big Bay Point developments did have significant impacts on the environment, and substantially had fisheries biologists, our aquatic biologists, our terrestrial biologists, our engineers, etc. take a look at the developments and try to mitigate them to the best of our ability, based on the policy and legislation that existed. The problem, in our opinion, is that we needed stronger policy and stronger legislation on which the authority would base their comments in order to take a look at the developments. We think the Lake Simcoe Protection Act and plan will afford that opportunity, and if it comes into effect, we will be very pleased to comment based on a strong plan and policy.

**Mr. Peter Tabuns:** Given your commentary, would you support a coming into effect date of December 2007 as a way of protecting the lake?

**Ms. Gayle Wood:** That's an area that is tricky, and the authority has quite frankly not taken a position on that, the reason being that you, as the provincial government, have the very difficult task of trying to reconcile the Places to Grow Act and the Lake Simcoe Protection Act. What we, as an agency, have done for you is take a look at the lake—we did this two years ago under the intergovernmental growth plan for Simcoe county. We were asked to take a look at projecting development into your settlement areas around Lake Simcoe to 2030, and to tell you, if that development was built to 2030, would there indeed be an impact on Lake Simcoe? The answer is yes—we've said that very clearly—there would be a \$163-million impact to the lake that would need to be restored.

So you've got the tough decision to determine what's going to be the balance between the growth plan and the act. Our position is to be the scientific agency and advise you, on various scenarios you wish to consider, what's going to be the impact of that development on the lake.

**Mr. Peter Tabuns:** I know it won't be your decision. That's why I asked for your advice.

**Ms. Gayle Wood:** The conservation authority has not taken a position on that issue.

**The Chair (Mrs. Linda Jeffrey):** Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you for your presentation, and thanks for the hospitality any time I get up into Ms. Munro's riding; you've always been quite good to me.

I can't imagine that this process would have gotten this far without your assistance, and of course you've played a major role with a number of other groups and stakeholders in the area.

I wonder if you could explain in basic English what you're asking for in 27(1)(a). If we did make that change, what exactly would that mean? At the end of the day, everybody on any side of this issue would be looking for some form of accountability—the buck has to stop



somewhere on this. My feeling is that the buck should stop with the minister. I don't know if you feel the same way or not.

1700

**Ms. Gayle Wood:** Absolutely, the buck has got to stop with the minister when it comes to the Lake Simcoe Protection Act, and I think the authority has supported that.

What we're saying is that, under section 27, because we would now be subject to three pieces of legislation, that in essence means we have three different boards of directors to deal with, with various pieces of processes that deal with Lake Simcoe.

We believe that there can be a more efficient way of dealing with that, and we think the more efficient way is to amend the Conservation Authorities Act to allow us to have one board of directors to deal with all the issues related to the Lake Simcoe Protection Act, the Conservation Authorities Act and the Clean Water Act. Thank you.

**Mr. Kevin Daniel Flynn:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mrs. Munro.

**Mrs. Julia Munro:** I'm very pleased that you're able to be here today. I have a couple of quick questions to ask you, and I do want to indicate, just for the purposes of Hansard, that I did ask the question about the balance, when it was an issue for you. Certainly, I think it remains a very important question, a pivotal question.

I want to ask you: How complex is this watershed in comparison to your choice? Does it have unique issues? Do we need to have a Lake Simcoe Protection Act?

**Ms. Gayle Wood:** The watershed is extremely complex. It's one of your few southern Ontario inland lakes. It is in an area of intense growth. It has many other issues which you're quite familiar with. So, yes, it's extremely complex.

Does it need legislation? Absolutely. We are strong believers, as conservation authorities and Conservation Ontario, in provincial legislation which is strong, that can be implemented with a great deal of confidence at the local level.

**Mrs. Julia Munro:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mr. Tabuns. Did I ask you already?

**Mr. Peter Tabuns:** Yes, but if you want to let me go again—

**The Chair (Mrs. Linda Jeffrey):** Oh, you were first. No, no, you're done. I have to go back to my list.

Thank you, ladies, for being here today. We appreciate it.

**Ms. Gayle Wood:** You're welcome.

#### LADIES OF THE LAKE

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the Ladies of the Lake. Welcome. Make yourself comfortable. So far, you win the award for the most interesting handout that I've seen today, so congratulations. Not that I give an award, but it is unique. If you could get yourself settled.

**Ms. Annabel Slaight:** I'm not handing out a calendar.

**The Chair (Mrs. Linda Jeffrey):** We appreciate your being here. If you could say your name for Hansard, and the organization you speak for. When you do, you'll have 10 minutes. I'll give you a one-minute warning if you go over the time.

**Ms. Annabel Slaight:** Thank you very much, Madam Chair. Hello. My name is Annabel Slaight. I live year-round in Roches Point, a community of 250 people—about a quarter of them cottagers and three quarters of them full-time residents—on the east shore of Cook's Bay, in the south end of Lake Simcoe.

I am a co-founder of the Ladies of the Lake, a group of over 100 people from around the watershed, from Orillia to Aurora: cottagers, farmers, business people, retired people like me, moms and even a few dads.

We all came together in 2005 because of our complete frustration about what was happening to Lake Simcoe, without any significant government recognition of the situation in sight. And what did we do? Yes, we did something drastic—that calendar you've all probably heard about. Since 2005 we have engaged over 22,000 people in the watershed, people who have said, "Yes, saving Lake Simcoe is urgent," by buying our calendars—that first one for 2006, and now a second one for 2009.

The Ladies of the Lake, however, have been doing a lot more than standing around in drafts. We are using the arts to connect people. We are using research as the basis of our activities to help the lake. We are building bridges to advocate true change for Lake Simcoe's watershed. And right now we are developing some revolutionary ideas to get youth engaged in helping Lake Simcoe through filmmaking.

One of the major programs we instigated relates directly to our business here today. As we started rolling up our sleeves to help Lake Simcoe, we came to see that most of what was going on was studies, and that in fact none of them were in a form that could help ordinary people understand why the lake is ailing. Most people had no idea they lived in watershed, what a watershed is—a shack beside the water was the best answer we heard—let alone the fact that the lake's problems were being caused by human activities in the watershed.

So using some of the proceeds from the first calendar, which, by the way, earned \$250,000, we commissioned in fall 2005 a report with the Windfall Ecology Centre called *The Naked Truth: Behind the Science of Lake Simcoe*. In that report, science was presented in plain language, and content was built around people's questions like, "Why are there more and more weeds in the Lake? You can actually download that report. The address will be on the handout.

Next, in the summer of 2006, we gave that science report to 300 diverse people and armed them with digital cameras for expeditions out on rivers in canoes—Julia, you were there in one of those canoes—up over the lake and the land by plane, along the shoreline in antique cars, and under the water with the police marine unit. We then



gathered them all together to step off from the science and their first-hand experiences to talk about what they, the citizens, felt was needed for Lake Simcoe.

The result of their deliberations over those two week-ends is this: The Naked Truth Citizens' Action Plan to Save Lake Simcoe. I am going to use this plan today to frame my comments about the Lake Simcoe Protection Act and the Lake Simcoe protection plan, since I'm actually speaking for 300 of the most thoughtful and influential people who love Lake Simcoe and I'm taking only nine minutes of your time to speak for them all.

Every page in this fan deck is filled with wisdom, so I am leaving a copy for each of you. It's easy and interesting bedtime reading.

The number 1, page 1, item in the fan deck is a call for the creation and enforcement of legislation and policies that protect and enhance the ecological and hydrological integrity of Lake Simcoe and the watershed. So thank you very much, province of Ontario, from the people who worked on that plan. I can assure you that their hearts are with us today as their dream moves closer to reality.

There are, however, some things about the act that give us pause. For example, how are the transition regulations going to work? If we put the survival of this very sick lake ahead of human advancement—which we must now, because we should have introduced this act years ago, before so many horses had gotten out of the barn. And so now we can't let any more horses—well, let's call those horses what they really are: inappropriate developments—run away with this noble lake's health.

The government demonstrated its appreciation of this danger by announcing the interim phosphorus regulation, December 6, 2007. If this act and plan are really going to help Lake Simcoe, can there be any question that this act and plan must also affect development proposals now in the pipeline and that all of these developments should also meet the rigorous environmental and development standards we hope will be outlined in the plan?

To prevent development that is absolutely contradictory to the intent of the plan, and other new inappropriate developments that might sneak in before the plan goes through, why not make the Lake Simcoe Protection Act and plan effective from that December 6, 2007, date so no more development that might be harmful to the lake can take place?

Now to governance: The Naked Truth Citizens' Action Plan devotes a whole section to the importance of this. "Now is the time," the people said, "to integrate the scientific and research endeavours of the NGOs, governments and institutions, to communicate and collaborate ... as a means of developing awareness and buy-in." Sections 18 and 19 of the act call for the creation of a Lake Simcoe science committee and a Lake Simcoe coordinating committee. These new bodies are crucial.

In the past, government has tried to go it alone to help Lake Simcoe with LSEMS, led by the conservation authority. The complete public frustration about being shut out except for time-to-time consultations is probably

what got us to the point where we are today, at one table, talking about helping Lake Simcoe. However, what a waste of public energy. Harnessing public energy so that it helps the lake and makes good things happen is so much better than it is being spent railing against bureaucracy and backward-looking thinking.

1710

Paragraph 6 of subsection 19(4), regarding the appointment of committee members, says the Lake Simcoe coordinating committee should include "other interests, including, in particular, environmental and other interests of the general public." I'm not sure about how this is worded.

I was on the LSEMS working group about governance and was really pleased when Premier McGuinty, at the Lake Simcoe summit in 2007, said the act should support that working group's report. This multi-stakeholder group recommended that there be equal representation from industry, the public and government. If we all believe that coming together to work together is the newer and better way of doing things, this balance is vitally important. And when it says that industry or business should be included, we should keep in mind that business is a lot more than the development industry, which seemed to be a bit stacked on the stakeholders advisory committee, which I was also on, that helped form the Lake Simcoe protection plan.

Some have suggested that leadership of the lake's protection should be local; namely, the conservation authority which was leader of LSEMS. The conservation authority, we all know, has accomplished many things, but this idea of the conservation authority as the leader will simply not work, the reason being that we need something fresh that empowers all stakeholders so we can truly come together. We should be led and supported by the highest government with the most power to influence, and that is the province.

Now on to the role of science: Premier McGuinty said at the July 7 Lake Simcoe summit that the advice of the provincially appointed science advisory committee must be followed. That was music to the ears of the people who created The Naked Truth Citizens' Action Plan. They said, "Accessible science ... must be at the core of efforts to help Lake Simcoe."

When I was on the stakeholders' advisory committee, we saw and heard first-hand the informed thinking of the science advisory committee that had been assembled. Some of the best scientists possible were focusing their best efforts on Lake Simcoe, and as we go forward, we should not second-guess them or water down their advice, particularly their natural heritage recommendations.

**The Chair (Mrs. Linda Jeffrey):** You have a minute left.

**Ms. Annabel Slaight:** Thank you.

If the act's purpose is to protect and restore the ecological health of the Lake Simcoe watershed, we need to get the best advice we can and heed it. So the targets for phosphorus, surface impermeability and natural cover



must follow the advice of the science advisory committee.

The science advisory committee also made recommendations about shorelines. Shorelines were so important to this group. There was a whole chapter based on shorelines. They are not only absolutely important; they are a symbol of helping the lake in the future.

Now, for two seconds, I'd like to get a bit personal. As a person who is in this watershed and by this lake 24/7, I can tell you I see things every day that underscore the need for a very strong protection act that rolls into action quickly, with a firm message for all that we must be serious about healing Lake Simcoe. Action is overdue, and we can't keep putting things off any more. I see fields and forests being ripped up for development, when Environment Canada says the Lake Simcoe watershed already has less than the minimum forest cover. I see miles and miles of sod farms leaching fertilizers and chemicals into the lake to make new lawns for new development, when everyone knows now that helping the environment means we should be going for fewer lawns.

**The Chair (Mrs. Linda Jeffrey):** Ms. Slaight, can you wrap up?

**Ms. Annabel Slaight:** I will go to my one last point, which is a nice point.

Fortunately, this great lake and beautiful watershed is not completely ruined yet, but the rampant me-first thinking in all sectors has got to change if Lake Simcoe is going to be an integrated eco-model, where the economy and the environment are in sync with each other. The province must ensure that this act and this plan lets everyone see in no uncertain terms that the lake comes first and people must adapt their thinking, their behaviour and their business to protect it, and if they do, everyone, as well as the lake, will ultimately benefit.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you for your hospitality when I was in Barrie. That was a great morning we spent. I have your calendar up on the wall in my office. I went through the card deck, but there were no pictures in it.

We've met with a lot of success to date. I think the process has been a very positive one, and we're at the point where we're going to start making some firm decisions. I can't imagine we're going to make firm decisions at the government level and then the community engagement is simply going to stop. Somehow, that community engagement has to continue on into the future.

How would you suggest, or what have you learned so far, in the process that perhaps could aid us in establishing how the community sort of remains in—I don't want people to think, oh, we've cleaned up the lake, simply because we pass the legislation. There's a lot of work ahead.

**Ms. Annabel Slaight:** We have to step forward. I think the governance model for the lake of the past is not right for the times. There are these amazing groups of people around Lake Simcoe. That is probably one of the

greatest resources that Lake Simcoe has. Not only do they know about science, they know about what's going on locally. They know about education and children. There is just a lot of wisdom there. Therefore, I feel very strongly that the idea of having a science committee and a stakeholder coordinating committee that report to a higher level of government, i.e., the Minister of the Environment, is the way to go today.

**Mr. Kevin Daniel Flynn:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mrs. Munro.

**Mrs. Julia Munro:** I'm very happy that you're here today. I think it's really a demonstration of the accomplishment that you started just a few short years ago, that here we are today. I think you deserve a lot of personal credit for having that vision and bringing us all here.

I have a question, though, actually that relates back to that which Mr. Flynn just mentioned, and that's the issue of governance because I know from our conversations that that's always been an issue for you. I really was looking, in my question, for your best advice because accountability is always a huge issue. Transparency and accountability go hand in hand. People struggle with the whole question: Who's on that committee, are they appointed, are they elected and, either way, by whom, and how broad is the representation?

You mentioned the wisdom that's collected around the lake, which certainly I would agree with, but I would just ask you in terms of how many and how did they get there? What kind of process would you like to see on a governance model?

**Ms. Annabel Slaight:** I actually can answer that question quite easily because I was on the LSEMS working group that studied all of, I would say, 15 different governance models from Lake Champlain to the Rouge River to the Oak Ridges moraine. You name it, we looked at them all. We really did land on the idea that if there was a balance between government, industry and the citizens, in many ways they could be self-appointed, which means the government would say to certain groups, "Whom would you like to see?" and they come forward. In other words, instead of naming names, organizations—and there are several handfuls of them—and there are interesting new businesses in the watershed that would be very valuable to be part of the thinking about this, which is why I said there's more than just the development industry. I wasn't saying the development industry shouldn't be there; of course, they should, but there is more than that.

If a range of groups was identified within this broad mandate of a third, a third, a third and then you allow the organizations to appoint the very best people they can—it is really important that people who are on committees like this are active people who are connectors, who are doers, who can make things happen. So often, I have been involved in the last few years and I have seen people representing organizations. They really haven't participated very much and they have been there to represent the organization. They haven't been contributing a lot of thinking and forward thinking. It's all there in the summary.



1720

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you for coming and making the presentation today.

You talked about how people came together because of their concern for the lake. Can you tell me what changes you've seen in the lake and what changes you fear you will see in the lake that have motivated people?

**Ms. Annabel Slaight:** Do you actually mean in the lake or—

**Mr. Peter Tabuns:** In the lake.

**Ms. Annabel Slaight:** Inside the lake, in the water? It's interesting: There is this huge debate about whether the phosphorus has indeed really been reduced or whether the measurement means have changed. Climate change is also coming our way. When I was in the stakeholders' advisory committee, you know how people talk about elephants in the room? Climate change is the elephant in our room. Everything that we know now and the changes that we're seeing—I'm only seeing changes in the lake for the worse, quite frankly. I'm seeing more weeds than I've ever seen before in Cook's Bay.

I'm seeing really very distressing behaviours in people as well. We must, if we're going to have a plan, be firm enough and loud enough that everybody knows that they have to take part. I see people putting Miami Beach right on there—carving out all the rocks, all the natural shorelines, and putting in a beach like they were in Florida. People have got to learn a lot. Human activity is the reason this lake got into a mess, and we cannot go forward without making sure that people have the understanding and the feeling that they must change their ways.

**The Chair (Mrs. Linda Jeffrey):** On that note, thank you very much. We appreciate you being here.

## CONSERVATION ONTARIO

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Conservation Ontario. Mr. Pearson, welcome. Thank you for coming today. If you can get yourself settled and then if you could say your name and the organization you speak for. You'll have 10 minutes. I'll give you a one-minute warning. You have the floor.

**Mr. Don Pearson:** Thank you, Madam Chair and members of the committee. It's my pleasure to be here today on behalf of Conservation Ontario. My name is Don Pearson. I'm the general manager of that organization. We represent Ontario's 36 conservation authorities, whose jurisdiction covers about 90% of the population of Ontario.

Conservation Ontario is on record as supporting Bill 99 and we believe it's important to be represented here today to speak to a number of aspects of the proposed legislation that we believe will strengthen the act, that will acknowledge and reinforce the important role of the Lake Simcoe Region Conservation Authority and will

avoid duplication of regulation and effort in this important task.

LSRCA is recognized as a leader among its peers and has made significant progress in understanding Lake Simcoe and its environmental stressors while implementing programs that have reduced phosphorus loadings and have begun the restoration of important coldwater fisheries. But we also acknowledge that the tools available to the conservation authority are not adequate to address issues such as future growth, and hence the need for the proposed Lake Simcoe Protection Act.

First, I would like to acknowledge the government's steps towards legislating a watershed protection plan. Conservation authorities are in full agreement that the best way to protect and restore the ecological health of the Lake Simcoe watershed is through an integrated watershed management plan. This approach takes into consideration all the activities taking place on the land within the surrounding watershed which may impact the lake itself. It draws on the best available science, which has been and will continue to be provided in large part by the Lake Simcoe Region Conservation Authority.

As enabled under sections 20 and 21 of the Conservation Authorities Act and supported by the province and by the authority's member municipalities, Lake Simcoe Region Conservation Authority is an agency that has developed substantial capacity for the coordination and leadership of watershed plans and programs. As well, section 2.2.1 of the provincial policy statement under the Planning Act directs planning authorities to undertake watershed planning that, among other things, identifies "surface water features, ground water features, hydrologic functions and natural heritage features and areas which are necessary for the ecological and hydrological integrity of the watershed."

LSRCA has been financially and politically supported by its watershed municipalities to prepare watershed plans and to provide technical advice for land use planning documents and applications. However—and this is important—the implementation of watershed plans is not legislated, and the science and plans are therefore only advisory to decision-making. Thus, Conservation Ontario supports the concept of a provincially mandated watershed plan for the protection of Lake Simcoe and the ultimate approval of such a plan by the province, but we recommend that the proposed Lake Simcoe Protection Act respect and acknowledge the watershed management agency role mandated to conservation authorities through the Conservation Authorities Act.

Section 4 of Bill 99 lays out the objectives of the Lake Simcoe protection plan, and subclause 4(j)(ii) lists provincial legislation that provides protection for the Lake Simcoe watershed and is specifically necessary to build upon. It is a point of concern that the Conservation Authorities Act is not noted in this subclause, especially given the obvious parallels between the intent of the proposed legislation and sections 20 and 21 of the Conservation Authorities Act.

Overall, Conservation Ontario encourages the province to support and acknowledge the significant past,



present and future role of the Lake Simcoe Region Conservation Authority in leading watershed management activities and programs within the Lake Simcoe watershed through any plan that is developed. Implementation of the plan must avoid duplication of existing programs such as watershed planning, science and monitoring and stewardship, and should build upon them so as to ensure efficient delivery on behalf of Ontario and watershed taxpayers.

Our first recommendation is that subclause 4(j)(ii) include the Conservation Authorities Act as provincial legislation that provides protection for the Lake Simcoe watershed and that the Lake Simcoe protection plan will build upon.

We understand that it would be inconsistent with the committee procedural rules to amend the Conservation Authorities Act through this standing committee process, unless we have the unanimous consent of the members and, ultimately, the Chair of the standing committee. However, there are a number of items that we believe are of such significance that you will agree they should warrant serious consideration.

Under clause 27(1)(a) of the proposed Lake Simcoe Protection Act, the Lieutenant Governor in Council is allowed to make regulations that designate, for the purposes of the act, the participating municipalities for the LSRCA. You've heard before that this could be interpreted as—certainly, the intention is to provide LSRCA with jurisdiction over the entire watershed of Lake Simcoe, but it could be interpreted that it's only for the purpose of the Lake Simcoe Protection Act.

It's our advice that this expansion can be accomplished through an appropriate amendment to the Conservation Authorities Act that is specific to the Lake Simcoe Region Conservation Authority. This is not unprecedented. There are several sections in the CA Act that reference individual conservation authorities, and I have included the reference to the Grand River Conservation Authority in which the Lieutenant Governor in Council may designate the participating municipalities.

Accomplishing the expansion of the Lake Simcoe Region Conservation Authority under the Conservation Authorities Act would remove potential ambiguities regarding the conservation authority's jurisdiction and provide for the necessary power for the authority to levy the municipalities for implementation of the full watershed management program, which includes planning, regulations, policy development, enforcement, education, as well as stewardship. It would also remove any potential administrative and decision-making inefficiencies by essentially creating a board for the purposes of the Lake Simcoe Protection Act.

Our second recommendation is that the standing committee unanimously support that Bill 99 delete the proposed clause 27(1)(a) and subsection 27(2) and implement the intent through an equivalent amendment to the Conservation Authorities Act.

We appreciate the recognition provided, under section 24 of the Lake Simcoe Protection Act, of the section 28

regulations under the Conservation Authorities Act. However, if the standing committee sees fit to adopt the previous recommendation to make the amendment to the Conservation Authorities Act, it could delete subsection 24(1) of the proposed Lake Simcoe Protection Act, which deals with the expansion of LSRCA's area of jurisdiction for the purpose of the conservation authority's regulation 28.

As currently drafted, again, we interpret that subsection 24(1) may provide only limited or partial conservation authority powers within the expanded portion of the Lake Simcoe watershed. As stated previously, regulations are only one of a number of tools that are going to be necessary to implement the watershed management objectives. Therefore, the expansion of the conservation authority jurisdiction should not be limited to section 28 regulations.

Our third recommendation is that the standing committee unanimously support that Bill 99 delete proposed subsection 24(1), as it would be redundant, assuming recommendation number 2 is adopted.

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Subsection 24(2) of the proposed Lake Simcoe Protection Act enables prosecution of regulation violations for up to two years from the date of the violation. This accomplishes a necessary amendment to subsection 28(16) of the Conservation Authorities Act, which has been identified in our world since 2001, but it would only do that within the Lake Simcoe watershed.

We request the standing committee to make this amendment to the Conservation Authorities Act, and thus help protect watersheds across Ontario in addition to the Lake Simcoe watershed, and to maintain consistency within the section 28 regulations across Ontario. Most environmental legislation does contain a two-year statute of limitations, including the Niagara Escarpment Planning and Development Act, which was so amended as recently as 2007.

Recommendation four is that the standing committee unanimously support that Bill 99 delete subsection 24(2) and implement it as an amendment to the Conservation Authorities Act as a new subsection 28(16.1).

Finally, Conservation Ontario wants to highlight the potential for overlap and duplication presented by the proposed shoreline protection regulations under section 26 of the Lake Simcoe Protection Act and the existing section 28 regulations under the Conservation Authorities Act.

The Lake Simcoe Protection Act, section 28, regulations are proposed for areas currently covered under the Conservation Authorities Act, section 28, regulation that deals with development, interference and alterations to waterways for very much similar purposes. The section 28 regulations, under the Conservation Authorities Act, empower authorities to regulate development and activities in and adjacent to river or stream valleys, Great Lakes and large inland lake shorelines, hazardous lands, watercourses and wetlands.

In the case of the Lake Simcoe—



**The Chair (Mrs. Linda Jeffrey):** Mr. Pearson, you have a minute.

**Mr. Don Pearson:** Thank you.

In the case of the Lake Simcoe Region Conservation Authority, Ontario regulation 179/06 includes the shorelines of Lake Simcoe as well as the above-mentioned regulated areas. Thus, potential exists for confusion, overlap and duplication of administrative and enforcement mechanisms, with the unintended result of wasted financial and human resources.

Our fifth recommendation is that the shoreline protection regulations under section 28 of the proposed Lake Simcoe Protection Act not duplicate the Lake Simcoe Region Conservation Authority's section 28 regulation.

In conclusion, I want to commend the Ontario government's efforts at legislating a watershed plan, and reiterate that conservation authorities are in full agreement that the best way to protect and restore the ecological health of the Lake Simcoe watershed is through the implementation of an integrated watershed management plan.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Our first speaker would be Mrs. Munro.

**Mrs. Julia Munro:** I wanted to ask you, given the concerns you've raised in this presentation, whether you would be, ultimately, looking at this as something that would become a template for other conservation authorities?

**Mr. Don Pearson:** In terms of the template, the aspect of the Lake Simcoe Protection Act that conservation authorities support is providing for the development of watershed management plans that are actually capable of being implemented. The limitation under the Conservation Authorities Act is that, effectively, the act can be developed in a multi-stakeholder forum, it can be absolutely sound in terms of science, and it can only be implemented to the extent that the conservation authority is able to negotiate resources or persuade planning authorities, for example, to incorporate it into official plans. It's very much a voluntary effort. So the fundamental difference with the Lake Simcoe Protection Act is that it's mandated, once the plan is developed, that it will be implemented. In that respect, the process could be applied throughout. We're not really talking about governance here. I'm only really talking about the content of the plan.

**Mrs. Julia Munro:** That's right—

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Tabuns.

**Mr. Peter Tabuns:** Thanks for your presentation.

I have to say, I heard the presentation from the Lake Simcoe conservation authority and I've heard yours. The conservation authority didn't speak out about Big Bay Point. As I understand from what you've said, they're responsible for protecting this watershed.

As a member of the umbrella group for all the conservation authorities, do you think that digging out a 30-acre artificial lake on the edge of Lake Simcoe to provide for a thousand more boats going into this lake—do you think, ecologically, that's defensible?

**Mr. Don Pearson:** I'm not qualified to speak about whether that particular development is defensible or not defensible. I think I would defer to the response that was provided by the LSRCA in that regard. But, again, I can tell you that the advisory role of the conservation authority and its ability to influence development is very much one where the authorities are required to strike a balance between their regulatory powers, their influence on the planning process and their application of science. Again, the land use planning process is governed by the Planning Act which clearly resides in the municipalities, and the authorities always have to walk a very fine line in terms of—

**Mr. Peter Tabuns:** I understand the municipalities and the province have the power. We look to the conservation authorities to give the advice, and the conservation authorities are silent when substantial negative change takes place; I don't see them as fulfilling their responsibilities. Do you think you should be silent when in fact the ecology of the lake is going to be impacted substantially?

**The Chair (Mrs. Linda Jeffrey):** It needs to be a short answer to that.

**Mr. Don Pearson:** Yes, I think the context of a properly developed and approved watershed plan would provide the basis on which the authority could provide that kind of advice.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you for the presentation. Obviously I don't reside in the watershed, but I reside in a watershed that's governed by a different conservation authority down in Halton region. I look at this with some interest, because having seen my own community go through some trials and tribulations as it's grown, often it has been a very adversarial process. This process to date has been fairly positive and groups have been trying to work together.

At Conservation Ontario, do you discuss this process? Has this been the subject of any feedback from your members? Certainly, I'm just thinking as a person from a different watershed. I could be a little closer to this issue than other people, perhaps, but I think even at this stage in the game there appears to be a lot of learning.

**Mr. Don Pearson:** Thank you. The best way I can answer that: Certainly the conservation authorities at Conservation Ontario have taken a great deal of interest in the Lake Simcoe legislation. The authorities within their own areas of jurisdiction again have responsibility to bring forward advice to undertake planning and to try and advocate for protection of the resources. Having said that, it's obvious that they try to define that fine line between their jurisdiction, their role and the various interests of the community because obviously there are economic interests that appear sometimes to compete with environmental interests. How do you get everybody in the tent, so to speak, and get them to agree on a certain way forward?



**Mr. Kevin Daniel Flynn:** Okay. I just wondered if you could answer one short question on recommendation three.

**The Chair (Mrs. Linda Jeffrey):** Mr. Flynn, it's got to be really short.

**Mr. Kevin Daniel Flynn:** Yes, it is short. You're saying that the statute of limitations as proposed is two years. What statute of limitations are you currently operating under?

**Mr. Don Pearson:** It's six months.

**Mr. Kevin Daniel Flynn:** Okay, thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today. We appreciate your delegation.

#### KELLY CLUNE

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is Kelly Clune. Welcome. As you settle yourself, if you're speaking for an organization, can you tell us the organization you speak for? If just for yourself, if you could state your name for Hansard. When you begin, you'll have 10 minutes. I'll give you a one-minute warning as you approach your 10 minutes. The floor is yours.

**Ms. Kelly Clune:** Okay, great. Thanks. My name is Kelly Clune, and I'm a resident of the city of Orillia. I'm proud to say I'm also a Georgian College environmental techniques student and enjoying that. I've been involved in waste issues for some time in the city of Orillia.

This has to do with garbage and dumps, so I would really like it if you could just imagine that there is a garbage bag here with a big question mark on it because that's really what it's all about. I usually bring visuals like that, but unfortunately, I'll have to get you just to imagine that garbage bag with a big question mark on it there.

I just want to say thanks so much. I appreciate what you're doing. We really need an act to protect Lake Simcoe. It's in serious danger. I'm just going to refer to the environmental assessment hearing that I was involved in as an intervener in 1991.

In 1991, an environmental assessment hearing was held in the city of Orillia to review the certificate of approval for the Kitchener Street landfill site. That's the city's garbage dump located on the shore of Lake Simcoe. That hearing lasted two weeks. A significant amount of time and money and a great deal of consideration went into preparing the EAB report. I would like to share with you some of the comments and recommendations from that 1991 landfill hearing because they apply to Lake Simcoe.

1740

You have a map before you, I hope, that's sort of two-sided. On the map there are actually two landfills side by side on the shore of Lake Simcoe there. The Kitchener Street landfill, which is the current one in use, was established in 1967, when the old landfill, just east of the new site, was closed.

The old landfill accepted waste from about the 1940s to 1967, and waste disposal inventory confirms the well-known fact that toxic materials, chemicals that pose a threat to human health, were dumped there.

Neither landfill has a leachate collection system. The city's sewage treatment plant is located between the two landfills. The city's drinking water intake pipe is located just downstream from this. As a resident of the city of Orillia, that concerns me.

In 1991, it was reported that contaminants from the city sewage treatment plant and the old and current landfills were spilling into Lake Simcoe through Mill Creek and Ben's Ditch in significant quantities. You'll see that on the side there's a picture of Mill Creek and Ben's Ditch. You might be able to see them.

The report reads: "With respect to Lake Simcoe, the landfill is having an effect which cannot be measured because of the dilution factor caused by the large volume of water in the lake." So I would like to stress that the solution to pollution should not be Lake Simcoe, and that's currently what's happening.

In the 1991 EAB report, there resulted a number of conditions to reduce the impact of the landfill on the environment. One of these conditions stated that no toxic substances and no reusable, recyclable or compostable materials were to be landfilled. All waste was to be sorted. Unfortunately, the city is still disposing of contaminated material at this lakeside dump. In fact, in 2004, the city of Orillia dumped over 40,000 tonnes of contaminated soil from property with a plume of chemicals, including vinyl chloride levels of over two million parts per billion. I think somebody will discuss that next.

The report states that "the landfill is not endowed with the kind of ... clay barriers which would prevent leachate from escaping off-site...." In 1991, it was reported that the landfill generates 78 million litres of leachate per year flowing into Lake Simcoe. That was in 1991.

The board attempted to focus on positive opportunities, and in the report they stated: "This landfill is conveniently located next door to a sewage treatment plant, with the capacity to treat leachate. This convenience minimizes the cost and difficulty of operating a leachate system. Ideally, this landfill and Kitchener park (the old landfill) should have leachate intercepted and collected before it escapes into Lake Simcoe."

The EAB stated: "In our view, this is not a site with a high degree of natural protection. We were told that if monitoring indicates that leachate collection and treatment is necessary, a system will be installed. Yet, given the size of Lake Simcoe and its dilution potential for the leachate discharge, it may be unlikely that the city or its consultants will feel the need to request that a leachate system be installed ... we agree with the aphorism that 'an ounce of prevention is worth a pound of cure,' and recommend to the city and its waste advisory committee that the cost of installing and operating a leachate collection system, or a pre-treatment system, be explored and given serious consideration."

It's now 2008, 17 years later, and very little has changed. The proactive recommendations set out in the



1991 Environmental Assessment Board report have been effectively ignored: recommendations to protect our environment, in particular Lake Simcoe. Seventeen years later, and no leachate collection system has been installed at either landfill, and hazardous materials continue to be disposed of in this lakeside landfill, which is not lined.

It would be a shame if the Lake Simcoe Protection Act results in nothing more than paperwork like the EAB report. The Lake Simcoe Protection Act is long overdue. It's a proactive bill, and for it to be successful I would like to suggest that it possibly include specific timelines and goals and, most importantly, strong enforcement mechanisms that carry with them substantial fines for non-compliance. I hope that the number one goal might be to address the serious problems that are seeping into the lake from city of Orillia operations, specifically the 78 million litres of leachate that seep into the lake every year from the city of Orillia landfills on the shore.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much. Our first speaker is Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you for the presentation, disturbing as it is. Was the whole matter of leachate from those landfills raised with the Ministry of the Environment when they did their earlier review—consultation, I assume—with citizens about this act?

**Ms. Kelly Clune:** The ministry has reviewed the landfill recently, and we are quite concerned with the fact that they have actually made the conditions easier for the city to get around.

**Mr. Peter Tabuns:** Did they give reasons for reducing the strength of the regulations?

**Ms. Kelly Clune:** What I've heard is basically, "We're in a situation where, if you tell us to do that, we're going to run away and say we don't have the money. You're going to put us into bankruptcy, and so you as a province are going to come out to save us."

We have a situation here; it's political; it's got to be stopped. We need to take some action on this lake. I appreciate what you're doing, but we're in Orillia and we've got TCEs in our wells. We've got a serious problem. We're drinking from the lake, where contaminants are being spilled. I hear Mr. Barrett mentioning the number of people who are coming soon to spill into the area. If we don't have drinking water for them, what will we do from there? That's the situation we're facing now. We have a very serious problem.

**Mr. Peter Tabuns:** Have any of those leachate contaminants been detected in the city's drinking water?

**Ms. Kelly Clune:** TCEs have been detected in the two wells, and they've both been closed.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you for the presentation and for your support of the act. You kept referring to two sites. I see one, the Kitchener Street site. Where would the second site be on the map?

**Ms. Kelly Clune:** The second is the initial dump that was there. The one with the circle around it is the current, operating Kitchener Street landfill site, and directly to the

right of that is the earlier dump, which they now call a park, that people play on.

**Mr. Kevin Daniel Flynn:** This looks like the hearing was held in 1990 and the certificate of approval was issued in 1991.

**Ms. Kelly Clune:** The hearing was in 1991.

**Mr. Kevin Daniel Flynn:** Does the city of Orillia monitor the situation on a regular basis? Do they provide reports? You seem to be up to date on the information.

**Ms. Kelly Clune:** Well, it's been a 17-year-long haul trying to keep ahead of the game. That's what I consider it, a game. I think the monitoring is very important, but we have to get beyond that. We have to get beyond just monitoring, testing, reviewing, discussing and putting great pieces of work together; we need to take action.

**Mr. Kevin Daniel Flynn:** Are the results always made available to the public when the monitoring is done?

**Ms. Kelly Clune:** I guess, if you're given the opportunity to investigate that, but the results of the tests are questionable in themselves: whether or not they're tested for different materials, whether the materials get broken, samples get—we can talk about samples, if you want.

**Mr. Kevin Daniel Flynn:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mr. Barrett.

**Mr. Toby Barrett:** Thank you for the map.

In the last 17 years, is there kind of a paper trail of people writing letters to the various ministers? Have MPPs picked up this ball? Also, has there been any trenching? I assume there's a plume that's moving underground into either the creek or the ditch.

1750

**Ms. Kelly Clune:** Are you looking at the plume that's coming from the West Street site, or are you looking at the city of Orillia?

**Mr. Toby Barrett:** I'm looking at Lake Simcoe and the ditch.

**Ms. Kelly Clune:** Yes, the dump site. There's no leachate collection system under there. It's not a line dump. They're depending on a very thin layer of peat, in many cases, which is just four inches thick. What that site is, is a cash cow. Unfortunately, the people of Ontario are going to be paying the price in terms of health. We have a serious problem with this lake, and we need this act, we need the attention, we need it to be effective and—

**Mr. Toby Barrett:** Has there been any trenching or anything at all to—

**Ms. Kelly Clune:** There have been lots of studies.

**Mr. Toby Barrett:** Has equipment ever moved in to put up a barrier or to—

**Ms. Kelly Clune:** No.

**Mr. Toby Barrett:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today.

ALLAN MILLARD

**The Chair (Mrs. Linda Jeffrey):** Our last delegate today is Mr. Millard. Welcome. We've saved the best for



last. We thank you for being here today. If you could state your name—I presume you don't speak for an organization—

**Mr. Allan Millard:** That's correct.

**The Chair (Mrs. Linda Jeffrey):** —and then you'll have 10 minutes.

**Mr. Allan Millard:** My name is Allan Millard. I bring perhaps a slightly different approach to this committee, and I'm not speaking with a prepared speech. Some material has been distributed to you to support what I'm about to say. Perhaps you might want to read, at your leisure, some very interesting data I assembled in 2005 and a letter I wrote in 2008 about contamination in Orillia that is heading for Lake Simcoe.

My presentation is based on my experience, and it has not been good. I look at Bill 99 from a slightly jaundiced point of view. We have serious problems in Orillia relating directly to Lake Simcoe, and there appears to be no existing remedy. The city, when asked to act, does not.

I don't mind pointing fingers. I think the city of Orillia is a rogue in the whole area of protecting Lake Simcoe. The MOE has pleaded impotence, and frankly, Kelly Clune and I made presentations to the LSRCA and it has done nothing. So we are a little bit disappointed, to say the least.

I took action in 2004, with the support of some citizens, and took the city to court. It related to Lake Simcoe. My statement of claim, among other things, referred to the heavy cost to the people of Orillia, and in fact to all the people, animals and plants on, in and around Lake Simcoe. So I think it's relevant that I speak today; our pleas to other authorities have fallen on deaf ears. We were successful in court, by the way.

I look to Bill 99 to fill the legislative gaps that I discovered in trying to bring to public attention a serious environmental issue threatening the lake. I also want to say that I hope the Legislature will get this bill right the first time. I had experience, when I was involved with the tobacco control business, of a situation where inadequate legislation was passed and then the government washed its hands of it for a number of years, saying, "We've dealt with that." So I just say that you've got to get it right the first time.

I will deal with two specific problems in connection with the threat to Lake Simcoe. One of the goals in the plan is 4(d), "to reduce the discharge of pollutants to Lake Simcoe and its tributaries."

One of them, which I have outlined in a 10-page paper, is that I say the city of Orillia knowingly dumped hazardous waste into the landfill which is on the shore of Lake Simcoe. I point out in the covering note that my allegations have never been disputed. They've never been contradicted by the ministry, the city or anyone. In fact, the risk assessment that the city eventually submitted for the recreation project that it's trying to build on contaminated land gave further evidence to support what I have said.

We have approximately 20,000 tonnes that we know is heavily contaminated. This is muck, groundwater-satur-

ated soil. We have a world-renowned hydrogeologist who happens to live in Orillia, and his word is that this will leach from the landfill site into Lake Simcoe. He doesn't say "may," and he has this in writing and it has been in court. This is not "may"; it will. These are the things that we can't get people to look at, including the LSRCA.

In this recreation project on heavily contaminated land, one of the most heavily polluted sites in North America, the city has no plan to deal with the contaminants that it proposes to leave in the ground. These are contaminants like trichloroethylene at the level of—this you may find hard to believe, but it's true—2.2 million parts per billion. That is about 110,000 times what the MOE limit is for non-potable water.

In connection with that, please see my two-page letter about the Love Canal. We have a Love Canal situation in Orillia. Although it's moving more slowly than the contaminants did in New York state, those contaminants are moving inexorably towards Lake Simcoe. Of that there is no scientific doubt.

We need enforcement, and I recall what Kelly Clune said about the MOE and the certificate of approval. We got no satisfaction from the ministry. The minute we said, "But you require the city to have a plan. Fine, they have a plan. Do you enforce it?" The MOE said, "No, we don't. We have no means." I said at that meeting with three of their officials, "Well, you're the ministry. Go and get the authority." Needless to say, they didn't.

So I'm saying about Bill 99, I would like to see something in there that provides for real authority for the ministry to act. Following immediately on that, since I lack a certain confidence in public authorities, and bureaucrats are determined to cover themselves occasionally—cover their rear ends—I say there has to be some room in that act for the public to be involved, to call the government and authorities to account without having to take them to court, which I did. That was the last resort.

Ordinary citizens shouldn't have to do that. We should have something built into our environmental legislation that allows us to call to account public authorities when they don't do their job. It's pretty simple. I'm not going to give you specific recommendations. I'm just saying I think that's a general proposition that should be written into the bill.

I noticed a section that talked about requiring a municipality to pass a bylaw, and I say, "Good." It's certainly needed for Orillia. But the protection act should go further and, as Kelly Clune has mentioned, there should be power to order the building of a leachate collection system around this contaminating landfill and upgrade the sewage treatment system in Orillia to handle things like DNAPLs—that's dense non-aqueous phase liquids, of which VOCs are a part—because it's admitted by our civic authorities that the water treatment can't handle that.

1800

**The Chair (Mrs. Linda Jeffrey):** Mr. Millard, you have about a minute left, okay?



**Mr. Allan Millard:** Objective 4(h)—I have to throw this in—talks about “environmentally sustainable recreational activities related to Lake Simcoe,” so I just want to make a pitch for this. We have huge power boats being operated on Couchiching and on into Lake Simcoe. These are fuelled, I believe, by gasoline and testosterone. I would like to make a serious plea that something has got to be done to stop this, if not for the carbon dioxide emissions, then at least for all that unburned fuel that is being spewed under water into Lake Simcoe. Please do something. Write it into the act if you have to.

Finally, I want to make this point. There is blanket legal protection of the bureaucracy and so on in Bill 99, and I would like to see some avenue for public interest action, when authorities like the MOE, the LSRCA or a municipality fail or refuse—in the case of Orillia, it's refuse—to act.

I also would like to see more “shalls” in the bill regarding public input. I believe a previous speaker spoke to that. Governments and bureaucracies don't have a monopoly on environmental wisdom. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Our first speaker is Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you, sir, for your presentation. As you can imagine, most—certainly, I am—are hearing this information for the first time. I noticed you've included a letter that you sent to the mayor of Orillia earlier this year, along with two councillors. Did you ever get a response to that letter?

**Mr. Allan Millard:** No.

**Mr. Kevin Daniel Flynn:** Okay. So you haven't got anything back at all?

**Mr. Allan Millard:** No. I should explain that one of the reasons I wrote the letter is that the mayor got very upset about three or four years ago when we started to compare what was happening in Orillia to Love Canal. He got very upset. So when one of the councillors also said that perhaps we were exaggerating, I said, “Okay. I'd better do my research.” So I did. Needless to say, I think I've effectively silenced that criticism. The mayor has said not a word about this comparison, which I maintain is very apt.

**The Chair (Mrs. Linda Jeffrey):** Thank you. From the Conservative side, Mr. Barrett, did you want to ask a question?

**Mr. Toby Barrett:** Thank you for the presentation. Yes, one would think that this is very timely to bring this forward at the provincial level, and I don't know to what extent it has been brought forward at the provincial level. You've brought this in shortly after the introduction of the Lake Simcoe Protection Act, which says something, that there may be a way and that perhaps it is through regulation, if the legislation cannot be amended to the extent to handle something like this. We know there are other pieces of legislation that deal with this.

Secondly, this issue has been raised before in the Legislature, in this committee, and before the introduction of another piece of planned legislation that we understand may be coming forward to deal with toxic waste, again through the Ontario government.

There are other measures that have been taken with other harbours. I don't know whether this would actually be in a harbour, but I think of Marathon Harbour or Randle Reef in Hamilton on the Great Lakes. Those hot spots, as they're referred to, on the Great Lakes, mainly in old industrial areas in harbours, are being dealt with—to what extent or how rapidly, I'm not sure. But one would think, with provincial legislation—

**The Chair (Mrs. Linda Jeffrey):** Mr. Barrett, can you finish your question?

**Mr. Toby Barrett:** —there would be a way that this could be worked in. So I would say keep it up, because it's very timely to introduce this right now.

**Mr. Allan Millard:** I would certainly support the province helping to deal with the brownfields, or hot spots, whatever you want to call them. There hasn't been any sign of that so far, and that's unfortunate. This is both a federal and a provincial responsibility. It goes well beyond the municipalities. The estimates for cleaning up or doing something with this problem of the contaminants that are heading inexorably to the lake have ranged anywhere from \$75 million to dig it up and treat it—we're talking about a depth of 22 to 25 metres of silty clay—to maybe \$4 million or \$5 million to put in barriers. You can either have a source control or a boundary area control for doing this. There is a way of doing it. But the interesting thing, in respect to your comment: If the city of Orillia were to walk away and say, “This is too much; we're not going to do anything,” I don't think there's any provincial legislation that allows the MOE or anybody else to say, “Sorry, you have to do something.”

**The Chair (Mrs. Linda Jeffrey):** Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you again for making this presentation today. Have you talked to the medical officer of health in Orillia or the department of public health about this?

**Mr. Allan Millard:** I did, in 2004 or 2005.

**Mr. Peter Tabuns:** And their response?

**Mr. Allan Millard:** They would not take a position. We had the data on the vinyl chloride and the DCE and the TCE from mid-November 2004, as I've mentioned in my handout. Vinyl chloride is a known carcinogen; it's a breakdown product from TCE and it rises. We said, “You've got a carcinogen. They want to build a recreation centre on top of this, if you can believe it. We need support from public health,” and they said, “Oh, no, that's not our business; that's environment.” So I couldn't interest the MOH. The level that was discovered in November 2004 was approximately 82,000 times the level allowed by the MOE.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much, Mr. Millard. We appreciate you being here today.

Committee, this concludes our hearing our delegates today on Bill 99, An Act to protect and restore the ecological health of the Lake Simcoe watershed and to amend the Ontario Water Resources Act in respect of water quality trading. We resume hearings on November 19 at 4 p.m.

*The committee adjourned at 1808.*







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# Official Report of Debates (Hansard)

Wednesday 19 November 2008

# Journal des débats (Hansard)

Mercredi 19 novembre 2008

## Standing Committee on General Government

Lake Simcoe Protection Act, 2008

## Comité permanent des affaires gouvernementales

Loi de 2008 sur la protection  
du lac Simcoe

Chair: Linda Jeffrey  
Clerk: Trevor Day

Présidente : Linda Jeffrey  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 19 November 2008

Mercredi 19 novembre 2008

*The committee met at 1602 in room 151.*

## LAKE SIMCOE PROTECTION ACT, 2008

LOI DE 2008 SUR LA PROTECTION  
DU LAC SIMCOE

Consideration of Bill 99, An Act to protect and restore the ecological health of the Lake Simcoe watershed and to amend the Ontario Water Resources Act in respect of water quality trading / Projet de loi 99, Loi visant à protéger et à rétablir la santé écologique du bassin hydrographique du lac Simcoe et à modifier la Loi sur les ressources en eau de l'Ontario en ce qui concerne un système d'échange axé sur la qualité de l'eau.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. I'm going to call the Standing Committee on General Government to order.

We're here to discuss Bill 99, An Act to protect and restore the ecological health of the Lake Simcoe watershed and to amend the Ontario Water Resources Act in respect of water quality trading. We're here to resume hearing delegations.

## DIETHER DABIS

**The Chair (Mrs. Linda Jeffrey):** Our first delegation is Diether Dabis. Welcome. We're glad you're here. Thank you for coming. If you speak for an organization, if you could identify that organization, and if you don't and it's just you, if you could say your name for Hansard. Once you begin, I'll give you 10 minutes and I'll give you a one-minute warning. Then there'll be five minutes afterwards for us to ask questions. The floor is yours.

**Mr. Diether Dabis:** Good afternoon, Madam Chair and honourable members of the government standing committee, ladies and gentlemen. I thank you for the privilege to address you on the Lake Simcoe Protection Act. I'm going to take you through a brief introduction, the purpose of my submission and the background and the challenges, and I'm going to finish off with some recommendations.

My name is Diether Dabis. I'm the riparian property owner of a cash crop farm located in the municipality of the township of Ramara and in the McNabb watershed. I've brought some pictures to give you an idea of where the location is. This is the McNabb watershed. The town

of Brechin is here, Lagoon City is over here, and just across the lake is Barrie.

My farming experience is derived from over 50 years of working in South America and in Canada, which includes efficient irrigation and drainage of farm lands with effective measures for erosion control of farm soil and nutrients, hence also the prevention of pollution to farmlands, waterways and the disastrous effects to water sources and lakes. I can tell you that my family, myself and many friends are advocates for a healthy Lake Simcoe.

Before I go into the purpose of my submission and the challenges, I'd like to show you that our farm is located right here and our next-door neighbours are a tourist resort. I get the impacts from all the pollution. This is some sort of an example. This is the resort here—they have a marina—this brochure gives you an idea of where they're located, and this is a kind of flume. Every time you have a strong rain, that's the pollution to Lake Simcoe, which then comes back with the wind and settles on the beaches. It certainly is not attractive for tourists.

The question is, why do I come before you? It is because I believe that with your understanding of what I am going to convey to you, eventually we will witness an efficient and cost-effective system in place to ensure the long-term health of Lake Simcoe. Therefore, my purpose is to share my experience and recommendations with the committee members, who I believe are facing a very demanding challenge to make a sound decision on the assignment to a qualified entity for the effective administration of the Lake Simcoe Protection Act.

I have attached a very interesting article, which is going to be handed out to you, that was written three years ago in the Orillia Packet and Times. The title is, "Just Who is Protecting Lake Simcoe?" You may find this very interesting for giving you some guidance on what's really happening and why there are problems, but the main aspect is, here we are, three years later—this article was written on November 11, 2005—and the negligence persists, as well as the lack of transparency and of accountability.

For that purpose, I brought some photos of the latest fiasco of this situation that is causing all the pollution to Lake Simcoe—ongoing pollution, I may add, with lots of flooding. This picks up the nutrients, and they end up in Lake Simcoe. The background, really, is that in late 1997, illegal drainage canals were installed in the McNabb award drain watershed by a local contractor



while the township council ignored the recommendations of a drainage engineer that it had to comply with the Drainage Act. They built some huge canals in here that eventually they had to close off because they were just causing too many problems. The pollution was incredible. These illegal works set a precedent that the Drainage Act can be violated without any consequences. I find this is important for you to know.

You also should know that the Drainage Act does not address environmental matters. When we went to the Ministry of the Environment or the Ministry of Natural Resources, this is the treatment we got. It's always somebody else; nobody took responsibility.

The committee may wish to take into consideration several facts for your deliberations. The February 24, 2004, statement by MOE provincial officer Scott Abernethy and the August 31, 2004, Ministry of the Environment director's order to the township states: "The McNabb municipal drain is a dysfunctional and unstable system." "Industrial development within the McNabb drain watershed has likely increased runoff (storm water flow volume and velocity) from pre-development conditions which caused stream erosion." These statements were accurate at that time and they're still accurate now.

There are several other aspects here, but I'd rather get to the conclusion so you'll hopefully get more opportunity for some questions. The conclusion is that, unfortunately, my experience over the past 10 years has been that any efforts to prevent the serious issues—and these serious issues are the ongoing environmental impacts, as you can see what's happening here to the lake and the marina, and the potential to public health as well. These are the two main issues which are caused by this dysfunctional and unstable drainage system. These have mostly been ignored, with all sorts of excuses and delegation among the different authorities, government ministries and agencies. Heaven forbid that this negligence causes a similar incident to the Walkerton experience. It's a warning.

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On Friday, November 28, I'm scheduled to come before the Lake Simcoe Regional Conservation Authority, the board of directors, to comment on the authority staff report that was crafted to respond to my September 26, 2008, deputation to the authority's board of directors. I requested the authority to act as a catalyst to solve the serious described issues. I'm going to try one last time to reason with the board of directors, and also in particular with the representative for the township, to use common sense and goodwill to solve this very serious situation with a high degree of urgency.

Provided there is interest by the committee, I can provide copies of my September 26 deputation and the ensuing authority staff report, as well as a response to my comments to the authority's board of directors on November 28. At your convenience, I'd be glad to come back if you need me for any clarification.

Now what you may be interested in is my recommendation. My recommendation is as follows. The com-

mittee may agree, from the information I provided, that the committee has a great challenge to deliver on the objective to protect the health of Lake Simcoe. It appears that there's only one option: to assign the effective administration of the Lake Simcoe Protection Act to an entity that must be completely independent and have full authority to enforce the Lake Simcoe Protection Act with punitive actions when the act is violated.

Considering that the Ontario conservation authorities—all the authorities; I'm not just talking about the Lake Simcoe conservation authority—receive nearly their entire funding from municipalities, how likely is it that the conservation authorities will find fault with their client and partner municipalities that pay their wages and for their operations?

**The Chair (Mrs. Linda Jeffrey):** Mr. Dabis, can you wrap up? You've got about 30 seconds left.

**Mr. Diether Dabis:** I'm done. The situation leads to conflict of interest and double standards. Therefore, in order for this entity to be completely independent, it must be funded by the Ontario government and perhaps also with funding from the federal government.

This is my submission, if you have any questions.

**The Chair (Mrs. Linda Jeffrey):** Perfect. You gave yourself 15 seconds left over. That was good.

**Mr. Diether Dabis:** Well, I kept my watch here.

**The Chair (Mrs. Linda Jeffrey):** You did good. I knew you were getting close to the end, but I wanted to make sure. Sometimes people extrapolate a little further.

Mr. Barrett, you have the floor.

**Mr. Toby Barrett:** Thank you, Diether. There's an awful lot of information there. You've raised a governance issue that will be dealt with through this legislation and regulation.

The problems or the impact on Lake Simcoe and the watershed: Is it specific just to this drain, which I guess is poorly designed, or—

**Mr. Diether Dabis:** This is the one I'm familiar with.

**Mr. Toby Barrett:** I'm just thinking of Bradford Marsh, Holland Marsh; they were drained years ago. Is that a problem as well, or was that done properly?

**Mr. Diether Dabis:** That is a serious problem because of the high level of phosphate that leaches into the lake, but they are working very hard at minimizing that. But if you have a major storm, the rain just leaches it and it goes into the canals and then into the lake, and that's why you have all the algae and all these problems in those areas.

**Mr. Toby Barrett:** Yes. Has this drain been dug out recently? Has that exacerbated the—

**Mr. Diether Dabis:** Well, what exacerbated it is, you know—it needed an improvement. But the original award drain was built in the early 1900s and it goes right up to the township here. But the township abandoned their portion along Rural Route 12, I think it is. They even built a heliport on top of it. Now this opportunity came because they built these illegal canals which they had to fill in—and pay for them to be filled in—and then a referee was appointed to try to solve the problem.



What these guys did is they built storm management facilities right here in the industrial park at Lafarge. Their intention was to ship the whole thing down. Lafarge is presently pumping their water from the quarry into the Talbot River, but their intention was to put it down here, then through the resort and into the lake. But we opposed that.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Tabuns.

**Mr. Peter Tabuns:** Diether, thank you for your presentation and for these photos you brought today. The flooding of the farm fields: How common is this? How extensive is this?

**Mr. Diether Dabis:** The problem occurred because, before they destroyed the natural area here, which is in Lafarge, it used to act like a sponge and hold the water. They've built these stormwater management ponds, but they haven't controlled the flow out into the water, into the drain. So when you have a big rain, it just comes down and it erodes the stream banks, it picks up nutrients in the flooding and so on and it's a serious, serious matter. But as I said, when you talk to all the different ministries and so on, it goes this way.

**Mr. Peter Tabuns:** And the regional conservation area: Have they taken a look at this problem? Because if you're seeing flooding like that—

**Mr. Diether Dabis:** Yes, but they have a conflict of interest.

**Mr. Peter Tabuns:** Don't they have a responsibility to address flooding?

**Mr. Diether Dabis:** I would think so, because they call it water management. This is why I made two deputations to them, in 2003 and again on September 26.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you, Mr. Dabis, for your presentation. My eyes aren't as they should be, so I was following your words and not necessarily your pictures. You're saying that there is a tourist resort that is your neighbour?

**Mr. Diether Dabis:** Yes.

**Mr. Kevin Daniel Flynn:** Were they the party that installed the drainage canals?

**Mr. Diether Dabis:** No. They're at the end of the drain. That's where they have the marina. This is the kind of water that they get in the marina and on the beaches. There's a danger to public health.

**Mr. Kevin Daniel Flynn:** So your point is that since 1997, when these were installed, you've been sort of frustrated in your efforts to deal with this?

**Mr. Diether Dabis:** Yes. What we accomplished is, they had to fill in these huge canals, twice the size of the original drain. That helped, but then they have not established proper controls in the stormwater management facilities.

One thing that I may say has come out of this is that from now on every drainage engineer who's going to be appointed will get a one-on-one course on environmental matters, because the Drainage Act doesn't concern itself

with environmental matters. The Drainage Act doesn't care what's happening here.

**Mr. Kevin Daniel Flynn:** Okay. I need to ask you one very brief question, and that is, you support the intent of the act, but your point is that there has to be an independent body that runs it.

**Mr. Diether Dabis:** Absolutely.

**Mr. Kevin Daniel Flynn:** Okay. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today and thank you for all your work.

**Mr. Diether Dabis:** Thank you. If you need me back, I'll be glad to come back. Just give me some time.

#### DEBORAH BEATTY

**The Chair (Mrs. Linda Jeffrey):** Our next deputation is Deborah Beatty.

**Mr. Diether Dabis:** It's nice and warm.

**The Chair (Mrs. Linda Jeffrey):** It's not the hot seat, but welcome. I'm glad you're here. If you could state your name at the beginning of your presentation for Hansard. If you speak for a group, mention the group. If not, once you begin you'll have 10 minutes, and I will give you a one-minute warning.

**Ms. Deborah Beatty:** Thank you, Madam Chair. I appreciate the opportunity of speaking today on a topic that I am quite passionate about. My name is Deborah Beatty, and although I am a past president of the Lake Simcoe Conservation Foundation and a member of the board of the Rescue Lake Simcoe Coalition, I'm speaking today as an individual, representing myself and those 100-plus other permanent and temporary residents who share a communal patch of land on Lake Simcoe at Degraasi Point in Innisfil.

I've been a summer resident at Degraasi Point since I was two years old—and you're not allowed to ask me my age. My grandchildren are sixth-generation cottagers. Each summer, as children, my generation would wait for the shadflies to appear on the window screens, so dense you could hardly see outside. That always meant the fish would be jumping and a fresh bass dinner was in sight. Today, there are no shadflies, because these small benthics breed in water and the water is no longer clean enough for them to reproduce.

Finding clams and the long trails they left behind in the sand was a daily exercise. There are no clams anymore; the zebra mussels have pretty effectively wiped them all out. Our natural sandy beaches where endless castles were constructed are now awash in piles of weeds that need to be raked up each day when the children come down to play.

1620

I could talk about the cold water fishery being sustainable only because it is stocked and many other issues, but my point is that all of this has happened in just one lifetime. I can only imagine what our great-grandparents would say if they could see the degradation that has occurred around this lake.



The leadership shown by this government in the creation of a Lake Simcoe act is necessary, appreciated and very much admired. I thank and I applaud each and every one who voted positively for the first and second readings of Bill 99. I hope that the good intentions of this act are carried through with some very strong legislation.

I would also like to support the efforts of the scientific advisory committee, which has been working hard to set phosphorus target loads for the lake and is asking for 100-metre buffer zones as a protection along all our river and stream banks.

I wish to bring forward four points today which I feel are vital to the success of the Lake Simcoe act.

(1) This legislation will protect the future of Lake Simcoe, but what about the past? At present, the Lake Simcoe Region Conservation Authority has estimated that the cost of restoration alone on the lake will be \$163 million. This money is for the rehabilitation of those degraded streams and rivers, the retrofitting of inefficient stormwater ponds, shoreline improvements—in other words, the repairs of all our past mistakes.

Municipal and federal governments have both made financial commitments to this work, and the private sector is donating more than ever before to this effort. What about the province? It is vital that this act provide some sustained and adequate funding support to do the necessary restoration, for without both restoration and legislation, I believe Lake Simcoe cannot be saved.

(2) Canada is famous for its good legislation, but I fear we are also famous for our negligence when it comes to enforcement. I have seen examples of people intentionally breaking the rules because they know that the only penalty will be a fine. That fine then becomes part of the overall cost of the project—or worse, enforced for some and not for others. Tough legislation will be essential. I would like to see this act have an enforcement clause which includes replacing or repairing any illegal works to their original state, as well as a hefty fine for breaking the law in the first place.

(3) About six years ago, it slowly dawned on me that the Lake Simcoe Region Conservation Authority really has no authority, yet it is looked up to by the watershed residents as the place to turn for guidance when your neighbourhood is suddenly going to be doubled in size or there are dead carp, masses of weeds or zebra mussels all along the shoreline. The LSRCA has proven to be a positive force for the lake. Last year, they were in the top three runners-up for the International Thiess Riverprize in Australia. They have completed over 800 projects on the lake, one example being Kidds Creek in Barrie, where a one-acre parking lot where the creek was buried in a culvert has turned into a one-acre park, where fish and herons are now regularly seen. I ask that the authority be given some real authority to regulate environmental sustainable standards on activities in their watershed in order to be that strong voice we need for the lake and for its future.

(4) My fourth point is my last point, but not the least. As the pending legislation reads, there is a serious poten-

tial for duplicating existing legislation and adding another level of bureaucracy. I am aware that there is a push for the province to lead the implementation of the act. Citizens who are not familiar with the Conservation Authorities Act see the board as being biased due to its councillor makeup. It is, after all, the municipal councillors who approve all of the controversial developments going on in the watershed, and there are still more planned for the future.

The other serious concern is that the Lake Simcoe Environmental Management Strategy, LSEMS, partners are all government, and the public would like to have more meaningful participation in the decision-making.

I support these concerns, but I believe these issues can be dealt with very fairly and positively within the present structure without having to create another entity, which will cause duplication, confusion, create more bureaucracy, be more expensive, create communication problems and probably be a lot slower to respond to the needs. We need legislation that complements, not duplicates, the successful systems already in place.

Thank you for allowing me to speak today. I have to say I am proud and happy that my government is showing such great leadership through the creation of this Lake Simcoe act. This will set an example for many others, not just in Ontario but across Canada, and I hope North America. As Barack Obama says, “We can do it,” but as we say, “We will do it.” Thank you very much.

**The Chair (Mrs. Linda Jeffrey):** Mr. Tabuns, you have the floor.

**Mr. Peter Tabuns:** Thank you for the presentation, and thanks for taking the time to come here today.

The whole question of the conservation authority having real authority: You note that about six years ago, you started coming to the conclusion that it wasn't in a position to actually make the differences that you wanted to see. What were the events that led you to that conclusion?

**Ms. Deborah Beatty:** I was on the board of the foundation, and as more and more complaints came forward I realized, of course, that the conservation authority does not have the power to respond. It can't come through as a strong voice because it hasn't really been given any powers to approve and to disapprove. It is there for the purpose of commenting on what is happening on the lake. It does not actually have a voice that has to be listened to in any stronger way.

**Mr. Peter Tabuns:** Do you feel that it commented appropriately?

**Ms. Deborah Beatty:** I'm sure it commented appropriately. Whether those comments are followed or not, they have no backup or authority to ensure that their comments are followed, unless they concern breaking the present laws or stepping outside the present rules. But we are here to create an act because we know the present situation and rules are not nearly strong enough to save the lake.

**Mr. Peter Tabuns:** Thank you.



**Mr. Kevin Daniel Flynn:** Thank you for your presentation, and thank you for your kind words about the proposed act.

I'd like to hear your comments on the ministry's intention to create a Lake Simcoe plan project team. When I was travelling through the area for a couple of days to familiarize myself with the area, a lot of people were talking about the transition period, about the implementation period, about how the public and the stakeholders can stay engaged. Do you feel that, at least for the transition period, the project team, in a temporary way, will assist in that transition?

**Ms. Deborah Beatty:** I hope so. Certainly, in my opinion, they should and they could.

I see, in detail, in my head a lot of ways to merge the group of transition, some of the people who have sat on the steering committee and the various ministries that are involved. I think it would be half a day of sitting down and really trying to work out the structure.

After sitting on that steering committee for months, I think what happened is, we didn't have total consensus in the end, but we had consensus about one thing and that was, we did not want any duplication.

**Mr. Kevin Daniel Flynn:** Thank you.

**Mr. Toby Barrett:** I hear what you're saying on duplication, confusion, bureaucracy and other dangers like that. You say in your conclusion that it can be dealt with within the present structure, without having to create another entity that may lead to a lot of this stuff.

So you would go with the existing conservation authority even though, as you indicated, many of the members may well be pro-development, for example? We hear that the population of the area may double in the next 25 or 30 years. Is that the entity you look to see being developed?

**Ms. Deborah Beatty:** I see it changed. I see a changed version. I already see the authority has changed dramatically in the last four years because of public influence. I think there are many ways that public voices can be introduced into the authority and committees can be introduced into the authority that will ensure there is a balanced thought and process for decision-making. I don't think we have to go out and create a whole new entity to do it. I am sure that it is possible to use what we have, and obviously it needs change, but then at least it's things the lake and the functions and everything you need to really deal with the lake, from the science to the information from the output is all in one place. It only makes more sense, in my head.

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**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today.

Our next delegation is Alan McLeod. Is Alan McLeod here? Okay. We'll move on to our next delegation.

#### ENVIRONMENTAL DEFENCE

**The Chair (Mrs. Linda Jeffrey):** Environmental Defence—are they here? Mr. Donnelly? Is that right?

**Mr. David Donnelly:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Welcome. Thank you for stepping forward. You know that you have 10 minutes. I'll give you a one-minute warning. We're glad you're here, and thank you for coming.

**Mr. David Donnelly:** Thank you, Madam Chair, and thank you to all the members who are attending. This is indeed a happy day for Environmental Defence.

Environmental Defence is a cornerstone member of Campaign Lake Simcoe, and we wish to commend Premier McGuinty, Minister Gerretsen, his staff and key members of the loyal opposition and the NDP for supporting the first resolution that called for comprehensive, strategic watershed action and protection around the lake, but also the principles of this extraordinary and urgently necessary bill.

The Lake Simcoe Protection Act's chief strength is that it promises to put science first in what is now a desperate need and effort to save the lake. This bill particularly is a response to a call from a very broad consensus of citizens, municipalities, even the conservation authority, to plan for the future of this watershed using watershed boundaries as a guide. That's a critical success. Most importantly, this bill joins previous world-class, made-in-Ontario environmental protection plans like the greenbelt, the Oak Ridges moraine and Niagara Escarpment plans as an example of government and citizens working to get it together for the benefit of future generations.

I'm proud to say that I was with many of the citizens around the lake, people you've heard from already, at places like Moon Point, Bond Head and Big Bay Point. These are the people who stepped forward and challenged the existing regulatory authorities around the lake to do better, and I think that this government has put forward a bill that will do that.

But this citizens' movement to save the lake, the citizens' movement that asked that the new law be created to protect it, is now in danger of being either marginalized or silenced in this process. The bipartisan spirit that has governed this process so far is now being challenged by outside forces, primarily in the development industry, to try to silence public participation in the planning process. Many of the citizens who have been integral to the movement to create this bill are now fearful of speaking out to protect the lake they love. Strategic lawsuits against public participation are a serious and real threat—it's not academic—to the continued, citizen-led advocacy to protect the lake. I myself am a target of such a SLAPP suit. It would be a cruel and perverse outcome to launch this bill, with its new rights and responsibilities to protect the lake, in a community that is paralyzed by the sight of neighbours, friends and family having to pay millions of dollars in cost awards and legal claims.

I think that, as a companion to this bill, the government of Ontario should introduce SLAPP suit protection to protect people in this watershed and anywhere else in the province where the province is spending taxpayers' dollars to sponsor environmental approval processes,



whether it be through the Planning Act, the Environmental Assessment Act, the Ontario Water Resources Act, or any other of the world-class statutes that we have in the province that actually require public participation to be part of the process in some circumstances. You can't have it both ways. You can't create processes that encourage and promote public participation and then stay silent when the citizens who are engaging the process, at the province's request, funded by taxpayers, are too intimidated, too frightened, to even write a letter to the editor. My clients and my friends are some of those people. Without immediate action, the legacy to our children will be a lake choked with more weeds, a shoreline paved beyond a sustainable limit and advocates silenced as a growing list of species become species at risk.

I want to address a couple of particulars with respect to the bill. However, Environmental Defence echoes and supports the recommendations of Campaign Lake Simcoe, and we are a contributor to that process.

I do agree with Ms. Beatty insofar that enforcement has been critically lacking in this watershed. With the Harris cuts, the Ministry of Natural Resources and the MOE have been seriously short-staffed and unable to perform their proper regulatory functions. The county and the conservation authority simply are not resourced to carry out an effective job of enforcing existing, inadequate bylaws to protect the lake.

By way of contrast, New York City has an entire police force dedicated to monitoring and investigating activity in the watershed to ensure safe drinking water for the citizens of New York City. By way of comparison, that watershed is about 5,600 square kilometres. The Lake Simcoe watershed is about 3,300 square kilometres—smaller, yet roughly the same size. New York City employs 156 police officers who carry side arms and who drive in squad cars, and their sole function is to investigate and prosecute environmental offences. As recently as 2006, the Lake Simcoe watershed had two enforcement officers: one at the county—and he had a nickname, “Murray the County Mountie”—and one at the Lake Simcoe Region Conservation Authority.

When we were before the Ontario Municipal Board, fighting to protect one of the last natural shoreline areas around the lake, the conservation authority's contribution to that hearing was to oppose our evidence, and when we asked what bylaw enforcement capacity there was at the conservation authority, the response was, “One officer,” and he was on leave and not replaced.

For the public to have any confidence at all in this act, we have to have confidence in the enforcement capacity and the prosecution effectiveness of all levels of government around the lake. Otherwise, we are just creating an act and a plan that are fine words; without the on-the-ground enforcement, they will remain just words and the lake will not be protected.

Environmental Defence is keenly aware of the matter of the effective date of the act. We participated in both the Oak Ridges moraine conservation planning process and the greenbelt planning process. In both cases, to pre-

vent gaming of the system, two different governments imposed sensible dates. Some people call them retro-active dates; we call them the right effective date. When the government announces an environmental policy reform, if you don't make that policy or that act effective to the date that it's announced, you encourage developers to game the system by racing the clock to get in their proposals, no matter how half-baked, no matter how unsustainable, before the effective date of the act.

This is not an academic matter. In the case of north Oakville OPA 198, just before the effective introduction, or the effective date, of the new provincial policy statement, 22 development applications were filed under the wire on February 28, before the effective date of the new provincial policy statement. I know that Mr. Flynn is acutely aware of the perverse response that we got in that act to get all the development applications in under the wire before new environmental protection could be put in place. We cannot have the same episode occur in this act, and I'm sure that this government will follow the previous precedent set across many pieces of legislation, but most particularly through the Oak Ridges moraine plan and the Greenbelt Act.

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Section 14 of the bill creates an extraordinary and unprecedented, in my view, provision that hearing officers be appointed by the minister to deal with amendments to the plan.

**The Chair (Mrs. Linda Jeffrey):** You have one minute left.

**Mr. David Donnelly:** Thank you, Madam Chair.

These unelected and effectively unaccountable hearing officers should not be given authority beyond the scope of the minister, beyond the scope of the public to make changes to the plan that were never debated or contemplated by the public.

Finally, section 26: Our chief expectation through this process is that there be real shoreline protection in this plan, that we don't play favourites and allow 30-acre holes to be dug in the lake to permit the Big Bay Point mega-marina, when local residents can't move their dock or can't expand their boathouse. This is critical to the success of protecting the shoreline, but also to giving the public confidence that this bill is to be applied fairly across the watershed.

In conclusion, I'd just like to start where I began: by commending this government and in fact everyone in the Legislature who supported that resolution unanimously to get this process started. We are overjoyed that the government is going to take action, as it has done in the greenbelt and elsewhere, to create world-class legislation to protect this threatened yet still magnificent resource.

Thank you, Madam Chair.

**The Chair (Mrs. Linda Jeffrey):** You're welcome. Thank you. Mr. Flynn, you're first.

**Mr. Kevin Daniel Flynn:** Thank you, David, for the work you've done here and the work you did in my own community. I know you do a lot of other good work around the province of Ontario.



You've given us some suggestions as to how the bill could be strengthened. Item three on the vegetative buffers: Could you just expand on that a little bit? We all understand and I think we all agree that this lake's shoreline is, as you state, already hardened, unnatural and under stress. So you're suggesting that everywhere, any development be 100 metres wide. Is that right?

**Mr. David Donnelly:** First, we would divide the lake into two separate categories of land use. First would be approved urban growth and then there would be everything else: rural, agricultural, resort, seasonal, recreational. That way, within an urban area like the city of Barrie you would not expect to have a 100-metre vegetative buffer. You might make that a target and a guideline, and certainly you would look at surface impermeability within the approved urban area, but that wouldn't be a blanket policy across the watershed, except along streambeds and water courses. Everywhere else around the lake, if you expect that water quality to survive, the best membrane or buffer against impacts is of course at the shoreline.

So we would not prohibit, for example, someone putting a deck on their cottage or retrofitting their cottage, as long as they were done on green standards and that the net result of any kind of construction activity—obtaining a building permit along the shoreline—is that you increase the amount of permeable surface and that you improve the amount of vegetative cover on the lot, but that you could still erect, for example, a new cottage if you could obtain all the necessary approvals. But the 100-metre buffer is now the gold standard for protection.

I can recall representing Save the Rouge in the Rouge Valley, which is of course now world-class. It's one of the world's largest natural areas within an urban context. We started out with a buffer of three metres there just 10 years ago, and we're now up to 120 in some locations. One hundred is the minimum. If you want to preserve cold water fishery, 100 metres is the bare minimum for protecting water quality.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Barrett.

**Mr. Toby Barrett:** Thank you to Environmental Defence. We've heard from others that people are afraid to speak out on this subject. We've just come out of Remembrance Day, which partly marks the reason why people fought: so they had the right to speak out and to assemble and go to meetings and things like that. This committee has been asked to take a look at this in Quebec legislation that was to deal with that, and apparently it died on the order paper.

You mentioned Harris cuts to MNR and MOE. We've now had five years of McGuinty government. Has the McGuinty government not reversed those cuts? Is this still a problem? Is that what you're suggesting?

**Mr. David Donnelly:** I'd like to address both parts of your question because I'm personally affected by the first part.

I have personally taken statements from affiants in the Big Bay Point case.

**Mr. Toby Barrett:** Sorry, from who?

**Mr. David Donnelly:** Sorry, affiants—people who wished to participate in the Ontario Municipal Board hearing at Big Bay Point but who were too frightened to appear before the Ontario Municipal Board even though they were advised of the fact that they were protected by a privilege. Outside the privilege at the Ontario Municipal Board, there are people in that watershed who are afraid to write letters to the editor, who will not go to public meetings, who will not even speak to their neighbours about protecting the watershed for fear of being sued. In the Big Bay case alone, there are \$90 million of outstanding lawsuits across a broad spectrum of torts, including a cost award at the Ontario Municipal Board. The total value of claims and counterclaims is \$250 million. It is an extraordinary case but it is not the only case in the province where these so-called SLAPP suits are affecting public participation.

The remedy can not be just that we provide Quebec-style protection against tort claims like defamation and conspiracy. It is only logical that taxpayers do not want to fund an EA process, an environmental assessment process, that invites the public to come out, participate in a public forum and make written submissions while at the same time the developer is suing someone in the watershed for \$90 million. We need to stop these SLAPP suits, but we need to also suspend any approval process where there is outstanding SLAPP legislation. How can you claim to have an open process where people have the spectre of these lawsuits hanging over them? Now we're being expected to participate in the EA process and other environmental regulatory approval processes when half our client group is afraid to even write a letter to the editor.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Tabuns.

**Mr. Toby Barrett:** David, you didn't give me my second answer.

**Mr. David Donnelly:** I'd like to see more funding for enforcement in the watershed, yes.

**Mr. Peter Tabuns:** David, thanks for your presentation and your direction on governance and enforcement. All of that makes a lot of sense to me.

In your comments you talked about the conservation authority opposing citizens. I gather this is the Moon Point project. Can you tell me what the impact was on the citizens and on the community to have the conservation authority essentially undermining what they were doing?

**Mr. David Donnelly:** The need for citizen participation in the governance of any protection of Lake Simcoe changed at the Moon Point hearing. The conservation authority requested an intervention into that hearing and filed an affidavit opposing the introduction of expert evidence by Bob Bowles, who appeared before this very committee, when he found salamanders breeding on an adjacent property to Moon Point. Moon Point was one of the few natural shoreline areas remaining; it's now a subdivision. At that point, the citizens around the lake



said, "We cannot rely on the conservation authority to represent our interests. We need full citizen input." How can you have a conservation authority, a so-called scientific body, bringing non-expert evidence to contradict citizens? Those citizens paid money and hired Mr. Bowles to go out and do that survey. He got the goods, he found the evidence, and the conservation authority hired a Bay Street lawyer who intervened and tried to exclude that evidence. We lost that appeal and 40% of the Moon Point forest can now be cut, according to the decision of the Ontario Municipal Board.

That was a failure in the governance around Lake Simcoe; it was a failure on the part of the conservation authority. The way to address it is to make sure that citizens are represented on a go-forward basis on the protection of Moon Point and are part and parcel of this advisory committee and have an equal voice in the protection of the lake.

The citizens and the citizens' groups around the lake are not funded by developers. They don't stand for election in the way in which the election financing rules currently concern the lake. The 41 groups that are members of Campaign Lake Simcoe are volunteers. These are people who have the long-term interest of the lake at heart and not a short-term profit motive.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Mr. Donnelly. We appreciate your being here and your thoughtful presentation.

**The Chair (Mrs. Linda Jeffrey):** Would Mr. Alan McLeod be here? No.

#### REGIONAL MUNICIPALITY OF YORK

**The Chair (Mrs. Linda Jeffrey):** Okay, we're moving on to our next delegation, the regional municipality of York. Is it Ms. Mahoney?

**Ms. Erin Mahoney:** Yes.

**The Chair (Mrs. Linda Jeffrey):** Welcome. Thank you for being here. If you could state your name for Hansard and the organization you speak for. After you've done that you'll have 10 minutes. I'll give you a one-minute warning as you get close to the end.

**Ms. Erin Mahoney:** Mahoney, commissioner of environmental services with the regional municipality of York.

Today I'd like to leave you with three key considerations with regard to Bill 99. Overall, the region would like to commend the province for its very proactive approach to protecting Lake Simcoe.

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We have a long history of working in partnership with the Lake Simcoe Region Conservation Authority and others to study and restore the watershed while at the same time accommodating growth through the best use of technologies at our water pollution control plants in the watershed.

The region recognizes that the province and it must work together to ensure that there's a strong collaborative

planning framework, which is necessary to ensure that a comprehensive plan is implemented.

We have proven our willingness to work with other municipal governments, the province and the federal government on many issues, and recommend that enabling legislation and the plan for Lake Simcoe must enshrine the principles of sustainability, accountability and adaptability.

On sustainability, this references that not only environmental sustainability needs to be considered, but also fiscal and social sustainability. York region recognizes the three pillars of sustainability in its recent initiatives, including:

- our 2007 adoption of the York Region sustainability strategy;
- our discussion paper on climate change;
- our Planning for Tomorrow growth management initiatives; and
- our significant Water for Tomorrow commitments.

Information relating to these initiatives has been provided to this committee today, along with council's endorsed comments on the EBR posting of Bill 99.

We note that we have been recently recognized for our efforts by winning the first-place gold at the United Nations-endorsed International Awards for Liveable Communities. And we recognize that to remain competitive we must continue to do things differently in the future, and are working diligently to ensure this occurs. Our sustainability strategy provides a new approach to decision-making which integrates consideration of the environment, economy and community as well as emphasizing engagement, monitoring and continuous improvement.

Planning for Tomorrow, our growth management initiative, seeks to accommodate the province's Places to Grow legislation and plan in a sustainable manner. This provincial plan, I just want to note, requires York region to accommodate 1.5 million people by 2031, which is an increase of 500,000—half a million people—from where we are today. And 69% of York region is designated within the greenbelt and the Oak Ridges moraine conservation plan, focused on protecting important natural features and agricultural lands. So future growth within these provincial plan areas is very limited. Consequently, the additional growth forecasted through the province's Places to Grow needs to be accommodated through intensification in our existing built-up areas as well as within the three whitebelt areas, one of which is in the Lake Simcoe watershed in the town of East Gwillimbury.

The proposed Lake Simcoe Protection Act could make accommodation of the Places to Grow Act more difficult. In the eyes of some, we know, the two are mutually exclusive but, more practically, the two initiatives must co-exist. As Bill 99 is currently written, it can prevail over Places to Grow, but we believe it's imperative that Bill 99 be amended to acknowledge the requirements of the Places to Grow Act and the fact that future growth will occur in the watershed.

York region is committed to ensuring this growth will occur in a much more sustainable way: more compact,



more energy- and water-efficient, with restoration of natural areas, and careful water management and a better live-work relationship. In this way, careful development can be a positive and powerful force in the restoration of Lake Simcoe.

Our second theme is on accountability and governance accountability.

At its meeting of September 18, 2008, York region council endorsed comments on the EBR posting of Bill 99. These comments highlighted a need to clarify the roles within the act as well as provide long-term, stable funding for this initiative.

Subsection 19(1) of the act proposes establishment of the Lake Simcoe coordinating committee, and this committee would be an entity separate from the Lake Simcoe Region Conservation Authority. We believe the authority has a strong history of ably leading conservation efforts through its programs since its inception in 1951, and through the Lake Simcoe environmental management strategy partnership since 1990. The proposed coordinating committee would comprise and represent several bodies, including municipalities, agriculture, businesses, First Nations and others represented and appointed by the Minister of the Environment. This body would include coordinating implementation of the protection plan and providing advice to the minister.

Regional council, when it met in September, went on record as opposing establishment of an additional administrative body to oversee this work. Right now, the Lake Simcoe agency is accountable to residents and governments within the watershed. We believe it delivers its programs in an efficient, cost-effective and accountable manner. The work of the authority in watershed management has been recognized worldwide, and progress has been made in efforts to protect the lake and reduce the phosphorus inputs.

We should recognize the detailed watershed and natural heritage work that has been completed and build on these past successes. York region is of the opinion that the province should support the Lake Simcoe Region Conservation Authority as the lead agency in this undertaking without creating further duplication through another agency or board. Further, the regulation should identify appropriate levels of stable, long-term funding apportioned to all levels of government and lake users.

The region recognizes, and I think the authority does as well, the importance of broadening representation on a governing body for the watershed to include business sectors, First Nations, members of the public and bona fide environmental groups. We believe this can be accommodated within the authority structure for this initiative.

Moving to our final theme, adaptability, a healthy, vibrant Lake Simcoe will require innovative solutions. It will require a new way of thinking and a more integrated approach regarding environmental, economic and community planning decisions. It's necessary, then, not to limit or restrict innovative solutions as a result of inflexible legislation, plans or regulations. York region believes that collaboration is key to success.

We need to work collaboratively together to deliver the phosphorus reductions by addressing and funding the largest contributors of phosphorus into the lake. We have to identify where money is best spent to deliver the greatest benefit.

Controls at municipal sewage plants alone are approaching the point of diminishing marginal returns. Put more simply, we can spend millions of dollars installing or upgrading phosphorus removal technology with a decrease in input to the lake measurable in kilograms. If we were to focus our efforts on other, more significant sources, we could save those tonnes of phosphorus and spend the same millions, so millions to remove tonnes compared to millions to remove kilograms from the sewage treatment plant. Quite simply, we're looking for the greatest and most immediate bang for the buck, something that will have enduring and sustainable benefit for Lake Simcoe.

It's important to recognize that the 15 treatment plants within the Lake Simcoe watershed represent only 7% of the total phosphorus input into the lake. Even massive cuts in discharge limits from the plants will not realize the results that we're sure the province is hoping to achieve.

We're requesting the use of jurisdiction-based permitting for effluent phosphorus loads. In the case of York region, this would permit us to use some of the reductions from the decommissioning of our Holland Landing lagoons.

Finally, while we recognize that a viable water quality offsetting program will require significant development for administration and application, we also know that the opportunity exists to build on the successes and best practices of similar programs in other jurisdictions. Bill 99 proposes enabling amendments to the Ontario Water Resources Act for these components. These should proceed without delay to start capturing important opportunities now.

With that, Madam Chair, I conclude my presentation. I would be happy to respond to any questions.

**The Chair (Mrs. Linda Jeffrey):** Thank you. Mr. Barrett, you have the floor.

**Mr. Toby Barrett:** Thank you to York region. On page 3, you recommend that "it is imperative that Bill 99 be amended to acknowledge the requirements of the Places to Grow Act and the fact that future growth will occur in the watershed." I know one of our presentations indicated that growth would double to 700,000 people by the year 2035. It seems like an awful lot of people on what I consider a fairly small watershed. I guess if you could explain further: The problem is—you talk about these three whitebelt areas. Does "whitebelt" mean a non-greenbelt? Is that what that means?

**Ms. Erin Mahoney:** That's right. It's an area that we've designated for future growth within the region. To achieve our growth, we've outlined two mechanisms: intensification within the existing areas and then designation of what we call whitebelt lands, a very limited amount of land supply for future growth to move from



the million, roughly, where we are today to the 1.5 million stipulated in Places to Grow.

1700

**Mr. Toby Barrett:** So a number of those people will be going to the Lake Simcoe watershed?

**Ms. Erin Mahoney:** Some will. Some of the whitebelt lands are in that watershed.

**Mr. Toby Barrett:** This legislation, if it's passed, will supersede Places to Grow. What kind of amendment would we make to try to accommodate previous legislation that may indirectly be pushing more people into the Lake Simcoe watershed?

**Ms. Erin Mahoney:** I think it's probably a combination of two things: one, recognizing that all three things need to happen—we need to consider accommodation of future growth, doing it wisely—and then, in developing what the future loading to Lake Simcoe should be, recognizing that additional contributions to sewage treatment plants need to be considered in setting those loadings, and then focusing on some other areas to get the tonnage reductions in the long term.

**The Chair (Mrs. Linda Jeffrey):** Mr. Tabuns.

**Mr. Peter Tabuns:** Thanks for the presentation and for the data. You note that there are other significant phosphorus sources, aside from the sewage treatment plants. Can you tell us what the most significant ones are?

**Ms. Erin Mahoney:** In some of the documentation summarizing the sources that I have seen, atmospheric deposition is a big source. As I've said, sewage treatment plants represent 7%. Agriculture represents another significant source. I think that more than a third is coming from atmospheric deposition, in comparison to 7% from the existing plants.

**Mr. Peter Tabuns:** When you talk about ensuring that there's a proper interface between this act and the Places to Grow Act, what precise amendments would you suggest to the legislation?

**Ms. Erin Mahoney:** Recognizing, through development of the loading limits, that the growth that's forecast to occur in the watershed is accommodated through calculation of the future loads allowed from the sewage plants.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you for your presentation; it was certainly appreciated. This government has taken on this task, and people in the area probably wish it had started sooner. But it didn't, and this government has got it to this point. There's momentum moving forward; I think there's a very positive approach. Certainly, from my travels in the area, I don't think I found anybody who was opposed to this initiative. It's important that we keep that moving forward.

You have expressed your opinion, or the opinion of York region, as to who should lead that process. Others have obviously expressed other opinions. How do we continue to keep this moving? We talk about having a coordinating committee that still includes all stake-

holders. Could you expand on that, and maybe how the region of York would play a role in that?

**Ms. Erin Mahoney:** I think what we're suggesting is sort of leveraging the experience and structure within the existing Lake Simcoe conservation authority and board and, through some changes to that structure, including representation more broadly, as the Lake Simcoe act currently says for the recommended coordinating committee. If some of those same parties had representation in a revised authority board structure, the province may then achieve its objectives of broad representation from a variety of sectors while still, in our view, better leveraging the existing experience.

I know the province has a strong role in developing the act and the regulations. Our point is simply in the implementation. We think local implementation, local solutions with parties that are perhaps closer to that environment than the province, may achieve more efficient results. So there it is: using the existing structure and amending it to have broader representation than is currently on the authority board to capture some of the elements the province wants to see on a coordinating committee, and that should not stop the momentum.

**The Chair (Mrs. Linda Jeffrey):** Thank you, Ms. Mahoney. We appreciate your being here today.

Is Mr. Alan McLeod here? Okay, we'll move on to our next delegation, Rescue Lake Simcoe Coalition.

#### RESCUE LAKE SIMCOE COALITION

**The Chair (Mrs. Linda Jeffrey):** Welcome, gentlemen. If you're both going to speak, could you say your names and the organization you speak for. Once you've done that, you'll have 10 minutes. I'll give you a one-minute warning.

**Mr. Tim Crooks:** My name is Tim Crooks. I have a cottage in Shanty Bay on Lake Simcoe. I'm speaking on behalf of the Rescue Lake Simcoe Coalition, which represents 12 community groups around the lake.

Since our formation in July 2003, the coalition has been an independent, dynamic, reasonable and forceful voice for the rehabilitation and protection of Lake Simcoe. The coalition started the WAVE program, which worked with thousands of homeowners for three summers to help reduce the use of fertilizers containing phosphorus. Even the Ladies of the Lake, who have done so much to help Lake Simcoe, started as a project of the coalition.

Thank you for the opportunity to speak about Bill 99. The act is very good, but we would like to make the following suggested changes.

First, the effective date: Because the act is an environmental act, all the regulations and policies in the new act should apply to all developments in process as of the date the act is passed. We propose that the act's effective date should be December 6, 2007, the date the province introduced its interim phosphorus regulation.

The contents of the plan—I'll just quote from subsection 5(1). The plan "shall set out the following....



“3. The existing significant threats and potential significant threats to the ecological health of the Lake Simcoe watershed.”

Please take out the word “significant.” The use of “significant” implies a level of threat that is not defined clearly and is therefore open to misuse and misinterpretation.

Progress reports: In the act, required reporting on results is to be done “from time to time.” We believe that the first report should be produced within five years, and subsequent reports every three years.

I have some other suggestions.

First, the plan shall contain the same targets recommended by the Lake Simcoe Scientific Advisory Committee for shoreline buffers, phosphorus loading, dissolved oxygen natural cover and surface impermeability.

Second, the plan should set a 100-metre buffer along rivers and streams flowing into the lake. Of course, this is subject to the implementation outlined by David Donnelly earlier today.

All new houses, cottages and other developments should have a naturally vegetative wide corridor along the littoral. Existing properties without such a corridor should be given some incentives for making one.

New boathouse construction is a problem in the township of Oro-Medonte, because the township is not enforcing its own bylaws. Boathouse applicants go to the OMB to get their way. Please ensure that regulations regarding new boathouse construction are included in the plan.

The plan should prohibit developers and marinas from making new lakes and ponds on lands, rivers and marshes bordering the natural shoreline.

The plan should include policies and regulations that will force municipalities and cities to rehabilitate and restore obsolete, degraded and silted-up stormwater management ponds.

State clearly that the policies and regulations in the act should apply equally to marinas, resorts and residential developments.

Finally, please accompany the act with adequate and sustainable funding and a practical enforcement scheme.

Thank you. I'll now ask Jon Johnson to continue with our deputation.

**Mr. Jon Johnson:** Thank you, Madam Chair, for giving me this opportunity.

My name is Jon Johnson. My wife and I own a house near Big Bay Point on Lake Simcoe, and I wish to address two matters. The first is a distinction in the act between “designated policies” and “other policies,” and the second is a recommendation respecting the Planning Act.

The act is an enabling piece of legislation, and the real protection of Lake Simcoe will flow from the Lake Simcoe protection plan. The policies set out in the Lake Simcoe protection plan are critical to achieving the objectives of the act.

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For reasons that are not clear, the act creates two classes of policies.

The first class is designated policies that are given real legal effect through the “conform with” and “no conflict” requirement. The second class are other policies. These are policies that are not designated, and in the bill as drafted, they really have no legal effect. Just one example is in subsection 6(1) of the act, which requires that decisions made by municipal councils and other bodies under the Planning Act or the Condominium Act relating to the Lake Simcoe watershed conform with designated policies. Such decisions must merely have regard to other policies.

The “conform with” requirement provides real protection by giving legal effect to designated policies, because these bodies have to comply with them. The “have regard to” requirement, with respect to other policies, does not confer any legal effect because a body can conform with it or not conform with it, as it sees fit.

Legal effect is also given to designated policies through “no conflict” requirements. One example, subsection 6(3), provides that in case of a conflict between a designated policy in the Lake Simcoe protection plan and an official plan or zoning bylaw, the plan prevails. Another example, subsection 6(6), prohibits municipalities from undertaking improvements in the Lake Simcoe watershed that conflict with a designated policy. No mention is made, in any of these sections, to other policies.

If the plan consists of policies that are designated policies, the plan will protect Lake Simcoe and its watershed, because these policies will have legal effect. However, if the policies in the plan are not designated, the plan will be meaningless because the policies upon which it is based will not have legal effect.

The act is based on the Oak Ridges Moraine Conservation Act and the Greenbelt Act. These two acts protect environmentally sensitive areas of Ontario by establishing plans containing policies with which various government actions must conform or must not conflict. Neither the Oak Ridges moraine act nor the Greenbelt Act distinguishes between designated policies and other policies, and all policies have equal legal effect. The distinction between designated policies and other policies is unique to the Lake Simcoe Protection Act and makes a potentially much weaker instrument for environmental protection than the Oak Ridges moraine act or the Greenbelt Act.

With very few exceptions, the power to designate policies in the act is permissive. The government will have it within its power to make the Lake Simcoe protection plan an effective instrument for protecting and restoring the ecological health of Lake Simcoe by designating all key policies as designated policies. However, the act leaves an opening for the government to water down its promise to protect Lake Simcoe by reducing the plan to mere environmental window dressing by not designating key policies as designated policies.

We do not doubt the government's sincerity in bringing the Lake Simcoe Protection Act forward and its



stated desire to provide meaningful protection to Lake Simcoe and the Lake Simcoe watershed; however, power to cherry-pick protection through designating policies or not designating policies leaves a government vulnerable to pressure from groups whose interests are economic rather than ecological. We respectfully submit that the distinction between designated policies and other policies should be eliminated and that all policies in the Lake Simcoe protection plan should be given legal effect in the manner that designated policies are given legal effect in the current bill.

Alternatively, we propose that the act require that all policies in the act relevant to furthering the purpose of the act and the objectives of the plan be designated policies. Now several examples—

**The Chair (Mrs. Linda Jeffrey):** Mr. Johnson, you have one minute.

**Mr. Jon Johnson:** One minute. Several examples are found in the Campaign Lake Simcoe submission.

The other point I want to make relates to the Planning Act. I invite you to read the submission. There is a conforming requirement. There's a definition of "provincial plans" in the Planning Act—it includes the Oak Ridges moraine conservation plan and also the greenbelt plan—and that should be amended to also include the Lake Simcoe protection plan.

I'd like to make one final point. As I noted, our house is near Big Bay Point, and all parts of the Lake Simcoe watershed have an equal interest in the protection of Lake Simcoe, but Big Bay Point has received higher profile because of the controversy over the Big Bay Point development. I would like to support the recommendation made by Campaign Lake Simcoe that there be no grandfathering in the act. All developments lacking final permits or regulatory approvals must comply with the act and the plan.

Again, Tim and I commend the government on the initiative of bringing forward this very valuable piece of legislation. We both thank you for the opportunity to make our presentation.

**The Chair (Mrs. Linda Jeffrey):** Great. There are six seconds left. You did that really well. Mr. Tabuns.

**Mr. Peter Tabuns:** You're a very good Chair, Madam Chair.

Thank you for the presentation. We've had the conservation authority speak to us about their vision, their view, of this act. Were you consulted, as a stakeholder, by the conservation authority before they came forward?

**Mr. Tim Crooks:** I wasn't personally, no.

**Mr. Peter Tabuns:** Was your organization consulted?

**Mr. Tim Crooks:** I don't believe so.

**Mr. Peter Tabuns:** If, in fact, grandfathering is allowed, what do you think the impact will be on the protection of Lake Simcoe?

**Mr. Jon Johnson:** We obviously think it's negative. Basically, grandfathering is appropriate in things like the Income Tax Act, where you grandfather certain practices when you bring in a new tax policy; and in zoning, when you have an area that previously permitted spot com-

mercial operations and you change the zoning to make it solely residential. You grandfather those. But with environmental legislation, it's not really appropriate to have one set of rules for one group of people and another set of rules for another group of people, which is what would happen with grandfathering.

**The Chair (Mrs. Linda Jeffrey):** Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you very much for your presentation. I enjoyed it.

I spent a few days up in the area, as you know, and as a person from Oakville I was able to find out some things about the area that I hadn't known previously. One of the things I saw on a tour of the lake when I was looking toward the shoreline was that there were a lot of green lawns that you could tell were maintained by the use of fertilizer. I know that your group has done quite a lot of work trying to limit the home use of fertilizer and that you had a project going. Is there any quantifiable measurement to determine whether that plan has been a success, and what advice would you give to the average homeowner, moving forward?

**Mr. Tim Crooks:** One of the issues was how we would measure our success. We did the WAVE program in Shanty Bay and we gave people lawn signs to say that they didn't use fertilizer. Actually, if you go to Shanty Bay, you can still see some of the lawn signs that we gave out. In the end, we decided that there was some success, but it was very hard to measure.

**Mr. Kevin Daniel Flynn:** As a result of what I heard about your program, I consulted with the lawn care industry, and they tell me that the use of phosphorus is not really necessary in fertilizer. It's necessary for the establishment of seed, but after that it's really—

**Mr. Tim Crooks:** It isn't necessary. You can get all the phosphorus you need just from lawn clippings. We used to measure the amount of phosphorus. We had a kit and the WAVE team would go around measuring the amount of phosphorus in lawns. Usually, they found that every lot had enough phosphorus to last for years.

**The Chair (Mrs. Linda Jeffrey):** Mr. Barrett.

**Mr. Toby Barrett:** Thank you to the coalition. Kudos for the work on fertilizing lawns. I find if you do that, it just grows more. I don't know why anybody would want to do that.

You indicate that neither the Oak Ridges moraine act nor the Greenbelt Act makes this distinction between a designated policy and another policy, and that if it's not designated, then it's meaningless. For example, the greenbelt boundaries don't follow the watershed boundaries. They were done under a different regimen. So have we brought in the wrong legislation? Should we have brought in something closer to Oak Ridges moraine or something closer to the greenbelt-type legislation? We know those certainly have an influence on the over-population problem that is at Lake Simcoe now and is coming to the watershed. Is this going to be ineffective?

**Mr. Jon Johnson:** That's a big concern. You've got to ask to yourself, how does the plan become enforceable? The plan has a bunch of policies in it. The act really



doesn't set out hard requirements; that's not the way it's structured. It basically enables the creation of a plan. The plan sets out requirements in the form of policies and other requirements, but then you have to ask, "Okay, that's fine. You have a plan. How does that become effective?" The way, for example, the Greenbelt Act does it, and also the Lake Simcoe Protection Act does it, is it says that certain actions of governmental bodies, decisions by municipal councils, whatever, will conform with, or not conflict with, policies.

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In the Greenbelt Act, there's no distinction made between designated policies and other policies. But when you track through the sections of the Lake Simcoe Protection Act that give effect to the plan through, say, "municipal councils must conform with," and so on and so on, you find it only applies to designated policies. You ask yourself then, "What about the other policies?"

The best you get with the other policies is that some of the sections have this "have regard to" thing, which is not very effective. I think that doesn't require a whole lot of explanation. In a number of other enabling sections, they're not even referred to. Only designated policies have status. If all the key policies are designated policies, fine, that's not a problem. But if only the bare minimum of policies are designated policies, and there are a few that must be, but they're very limited, then the act really is not effective.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much, gentlemen, for being here today. We appreciate it. Is Mr. Alan McLeod here yet? No? Okay.

#### ALISON COLLINS-MRAKAS

**The Chair (Mrs. Linda Jeffrey):** Is Alison Collins-Mrakas here? Could you come forward? I hope I pronounced your name right. Is that right?

**Ms. Alison Collins-Mrakas:** You did, actually.

**The Chair (Mrs. Linda Jeffrey):** Excellent. Welcome. Thank you for being here. We're a little ahead of schedule. We're glad you're here. If you could state your name and if you speak for your municipality or not; if you could just clarify that at the beginning, and you'll have 10 minutes. I'll give you a one-minute warning as you get close to the end of your time.

**Ms. Alison Collins-Mrakas:** Right. Thank you very much.

**The Chair (Mrs. Linda Jeffrey):** The floor is yours.

**Ms. Alison Collins-Mrakas:** Good afternoon. My name is Alison Collins-Mrakas and I am a councillor with the town of Aurora. I'd like to preface my comments today by stating that the statements I make today are entirely my own and do not reflect the position of the town of Aurora. I don't speak for the municipality. I'm sure there are many who wish to speak today, so I'm going to keep my comments very brief. I believe you've been provided with my notes so you can follow along.

Thank you, first of all, for providing the opportunity for direct public input into this very important bill, the

Lake Simcoe Protection Act. I don't think it's mere hyperbole to state that the Lake Simcoe watershed is of vital importance to York region, within which my municipality resides, a growing region that's soon to be home to over 1.5 million residents. Indeed, York region is the fastest-growing region in the entire country. As you know, with growth come demands on infrastructure, services and employment. It's necessary, then, that in planning for growth, we consider the availability and sustainability of the resources our citizens need to live, work and play.

Of greatest concern, to my mind, is access to, preservation and protection of our water, and the implications of growth on our environment and water resources. It's in this context that I provide my comments on Bill 99. The Lake Simcoe watershed provides the necessary water resources either directly to many communities or indirectly to virtually all the communities within which it resides. It is a source of tremendous economic, environmental and indeed social importance to our communities and thus, I think that the creation and implementation of this act is indeed welcome news.

There are many strengths in the draft legislation. It is clearly informed by current ecological, environmental and social data. I think it's responsive and forward-thinking. It demonstrates a depth of understanding of ecological principles and their implications for applicable and relevant legislation. In this regard, speaking to section 24 of the act, I think it's an important step in protecting the watershed as a whole. The provision, as outlined in section 24 of the proposed act, affords the Lake Simcoe Region Conservation Authority the authority to review development plans from outside its jurisdiction. Specifically, it gives the LSRCA the authority to apply regulations made under section 28 of the Conservation Authorities Act to areas that are outside of its area of jurisdiction but within the Lake Simcoe watershed. This extrajurisdictional regulatory power is an important step forward in protecting our watershed as it finally recognizes that the environmental impacts do not stop at an imaginary geographic border. To my mind, LSRCA plays a very important role in promoting and protecting the environmental health of our watershed, so I think that this provision is a key strength of the legislation, just to my own opinion.

As with any document, though, there are always ways that it can be strengthened. My following comments are provided in that spirit.

I think there are three areas of concern and they can be summarized as follows: the financial viability and sustainability re the implementation of the plan, enforcement of municipal bylaws—and I understand others have raised a similar concern—and water extraction.

With regard to funding of the Lake Simcoe protection plan—and as someone who is going into budget season in my municipality, this is a serious concern for me—I noted with some concern that, listed under the objectives of the plan, I believe in paragraph 11 of subsection 5(1), is the development of "a strategy for financing the im-



plementation of the plan.” This is an extensive, comprehensive and clearly necessary plan, but it’s also, let’s be honest, a costly plan, or could be costly, and it will require considerable resources. Thus, I have serious concerns, as we head into what many feel is a pending economic downturn, with regard to, how is this going to be funded? How long will it be funded? In the event that obtaining full long-term funding for this cannot be guaranteed, have those elements of the plan that should be considered essential been identified? Will the very important work of the scientific advisory committee continue ad infinitum? My concern is that the financing of this plan should be of foremost consideration, not buried in one of the plan’s many objectives. Quite frankly, the other objectives of the plan are moot if there’s no financing in place to implement it.

My second concern, I believe, is echoed in the comments made by others, that municipal bylaws should not be constrained or limited by the act when such bylaws seek to preserve and protect the watershed. I’m speaking in reference to paragraph 5 of subsection 5(2) with regard to the prohibition of official plans and zoning bylaws containing provisions that are more restrictive than the provisions of the plan. I believe that should a municipality wish to enact a bylaw that is more stringent than the act, it should be able to. We’ve had a similar debate about the pesticide bylaw within our own municipality.

The expressed purpose of Bill 99 is to “protect and restore the ecological health of the Lake Simcoe watershed.” Thus, it is unclear why, when given the choice of a regulatory measure that is more stringent than another in protecting the watershed, the act would specifically limit the ability of the municipalities to take such actions.

Further, the specific limitation for municipal bylaws seems to be at odds with a later provision in the act, which gives precedence to regulatory measures that provide the greatest protection. I speak to section 25, wherein it states: “If there is a conflict between a provision of this act and a provision of another act ... the provision that provides the greatest protection to the ecological health of the Lake Simcoe watershed prevails.”

The question, then, is why does the same not hold true for conflicts with municipal bylaws? This provision of the act should, in the greatest respect, perhaps be reconsidered. The provision that provides the greatest protection, be it a municipal bylaw, a specific provision of the act, or any act, should be the regulatory measure that takes precedence.

My final concern is with regard to the issue of water extraction. In the very extensive report of the science advisory committee of June 17, 2008, the committee noted that water extraction was a stressor on the watershed. It stated, specifically, that “the amount of water-taking and its effect on the hydrology in the watershed is expected to increase and requires more study.” Though it was noted that, “at present, water extraction for water bottling does not appear to be an issue, future demands are expected to increase and, taking into account the

variability resulting from climate change and other stressors, we can anticipate a supply-and-demand conflict with demand exceeding supply.”

I have very serious concerns about water extractions, and bulk water exports are a completely separate matter but sort of inform my comments. I have serious concerns especially with regard to commercial water-bottling enterprises. Therefore, as the act stipulates that the precautionary principle will be universally applied, and given that the impacts of water extraction for bottling water are not known, I would ask respectfully that the committee consider strengthening the language in the act surrounding the objectives of the plan and speak specifically to a limit, or perhaps even a moratorium, on water extraction for the purposes of bottling water. Access to potable water and access to water for industry, farming and municipal services is a significant and looming challenge. Our municipality, for example, is under a phase 2 water ban as of May that doesn’t end until October. Access to water is a significant concern.

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Maude Barlow, the UN’s senior adviser on water, has noted that water is a scarce resource globally and that it is only a matter of time before Canada finds itself under considerable pressure to export its water. Thus, I think whatever measures we can take today to strengthen the protections afforded our water resources, the better.

In conclusion, I thank you once again for providing the opportunity to speak today, and I look forward to the enactment of Bill 99 and the enhanced protection it will afford the Lake Simcoe watershed.

**The Chair (Mrs. Linda Jeffrey):** Mr. Flynn, you have the floor.

**Mr. Kevin Daniel Flynn:** Thank you, Alison, for your presentation.

To date, the initiative appears to have drawn about \$30 million from the federal government and about \$20 million more from the province. We had quite a thorough presentation today from the region of York. I don’t think you’re on the York council, but you’re on the Aurora council. Is that right?

**Ms. Alison Collins-Mrakas:** Right.

**Mr. Kevin Daniel Flynn:** But you’re not here on their behalf.

**Ms. Alison Collins-Mrakas:** No.

**Mr. Kevin Daniel Flynn:** You made that clear. The region of York says that this act will be able to prevail over the Places to Grow Act and a number of other provincial statutes. The region seemed to have some problems with that. From your comments on municipal bylaws, I could assume that you have a different opinion?

**Ms. Alison Collins-Mrakas:** The region was—I’m sorry?

**Mr. Kevin Daniel Flynn:** The region had said, “As Bill 99 is currently written, it can prevail over Places to Grow and a number of other provincial statutes. We believe that it is imperative that Bill 99 be amended to acknowledge the requirements of the Places to Grow Act and the fact that future growth will” take place. Would



you agree with that statement, or would you have a different opinion?

**Ms. Alison Collins-Mrakas:** Speaking only for myself and not my municipality, I would disagree.

**Mr. Kevin Daniel Flynn:** Right, I understand that. Thank you.

**The Chair (Mrs. Linda Jeffrey):** Mr. Barrett.

**Mr. Toby Barrett:** Councillor, you indicate that York region is the fastest-growing region in Canada, and you talk about demands on water, water extraction and a future concern that demand would exceed supply. We had a previous presentation from York region where part of this watershed, in contrast to further south, I guess, is not covered by greenbelt, so there would be more people going into this watershed, perhaps. The intention may be good overall, but people leapfrog into this watershed. This legislation won't be able to do anything about that, as I understand. Is that your understanding? This is an environmental bill; it doesn't have the power of, say, the Oak Ridges moraine or the greenbelt legislation.

**Ms. Alison Collins-Mrakas:** I would agree with what you're saying. It is an environmental bill, but my understanding is that part of the objectives of the plan is to look at water balance and stresses on the hydrological environment. It could be conflated to encompass planning aspects.

**Mr. Toby Barrett:** It looks like the population is going to double in this watershed.

**Ms. Alison Collins-Mrakas:** I think it's by 2030 that we're supposed to have 1.5 million people, and we currently have just under a million.

**Mr. Toby Barrett:** So I don't know whether this environmental legislation can deal with the doubling of the population in the watershed.

**Ms. Alison Collins-Mrakas:** I'm not quite sure if it could, but it will at least protect the resources that we have.

**Mr. Toby Barrett:** Okay.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** No questions from me, but thank you very much for this. This is a wonderful presentation, and it certainly fits with what we feel in the New Democratic Party.

**Ms. Alison Collins-Mrakas:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much for being here today.

#### HOLLAND MARSH GROWERS' ASSOCIATION

**The Chair (Mrs. Linda Jeffrey):** Our next delegation is the Holland Marsh Growers' Association. Are they here? Great. Welcome. Thank you for being here. If you could get yourself settled, and when you do, if you could say your name and the organization you speak for, and you'll have 10 minutes after that. I'll give you a one-minute warning as you get close to the end if I think you're going to exceed your time.

**Mr. Jamie Reaume:** I won't take all 10 minutes. I know the last name is tough.

My name is Jamie Reaume. I'm the executive director of the Holland Marsh Growers' Association. I've listened to several of the comments. I know most of what was probably said, so my presentation won't take a great amount of time. I'm speaking on behalf of the farmers of the Holland Marsh.

When we talk about municipal issues and how they aren't addressed within the act, it's because, for the most part, I've found the Holland Marsh to be extremely schizophrenic as far as municipalities go. The marsh and its outlying muck crop areas are covered by three municipalities, one county and one region, and they all have differing points of view on what is taking place with it.

As far as the act itself goes, I don't think it goes far enough to address what Ontario really does have with the Holland Marsh. It truly is the crown jewel of agriculture in this province. It is Ontario's salad bowl. Consumers now demand food security and food safety and they want to have assurances about where their food comes from. That's what the Holland Marsh provides.

Historically, I would hazard to say that if the marsh was being presented today, we wouldn't have the Holland Marsh. Constructed in 1923, the marsh was actually remarkable for what took place at the time. There was full implementation in 1928. Up to 10,000 acres are being farmed now, agriculturally speaking. Were this to take place today, I don't believe that it would—not under the political climate or the conditions that exist within the marsh.

My farmers have been very proactive. We're a new organization, just three months old. We were left on the outside, so to speak, when it came to stakeholder meetings and having a real voice as to what's going on.

The association has been working with other partners in order to address some of the concerns that were expressed, i.e., the phosphorus. From the MOE's standpoint, 30% is agriculturally related. From our standpoint, we're trying to address that by working with OMAFRA and the University of Guelph on a project that we're presenting to the Lake Simcoe cleanup fund. The November 3 announcement of funds to be made available to help farmers with their fight with phosphorus is gratefully acknowledged, and the funds will be used by my association. The farmers are trying to make a difference.

Let's not kid ourselves, it's going to be an uphill battle to clean up the lake. It's not going to happen overnight. It's going to require the co-operation of not just the parties gathered here at the table, not just the legislation, not just the House, not the municipalities; it's also going to require the federal government to believe that Lake Simcoe can be returned to, as Minister Gerretsen referred to it, "beautiful waters." It's an awful lot of work.

The marsh itself, while never in danger of being developed, is in the unique, almost dubious, position of being probably the only land in Ontario that will face urban development like nothing that has ever been seen.

Our biggest concern is what others have mentioned: Which legislative act is going to take precedence over the



Holland Marsh? If it's going to be the Greenbelt Act, then it doesn't include all of it. If it's going to be Places to Grow, then there are some stipulations that need to be met. If it's going to be Lake Simcoe, then obviously our concerns are, where is the override, who has the authority, and where is the action plan going to take place?

The ministerial silos that we see are very much evident when we talk about agencies like the OPA, which is currently investigating six locations for a peaker plant that will be located within five kilometres of the Holland Marsh. This is why we have questions about what the act will entail. Obviously, a peaker plant doesn't conform with the Greenbelt Act, and it doesn't conform with the specialized crop act that was established for the Holland Marsh.

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If we had one request from this committee, it would be that we would like to be recognized, in our entirety, as a very specialized area, unique to Ontario, unique to Canada and world-renowned for what we are, which is probably the richest organic-based soil in North America. We have that distinction and we'd like it to remain. We want there to be future generations for food security and we want people to know that farmers, the original stewards of the land and the original environmentalists, are doing what they can to clean up a situation that they know was acknowledged as best management practices years ago.

But as anything with a best management practice, things tend to change. Times have changed. At one time, we used to bury our chemicals, or cast-offs, if you would. Uniroyal is a perfect example of that because they did nothing wrong by burying it in the 1950s and 1960s, yet it came back to haunt them later on in the 1980s.

We'd like to ensure that the marsh remains as an agricultural landscape. We'd like the farmers to be able to continue farming and we'd like to work with government in order to ensure that agriculture does have a sustainable future, not just now, but for generations to come. This land is very unique and I think it deserves to be protected and, quite frankly, it should be protected by this government. My comments, by the way, are a little off-page.

**The Chair (Mrs. Linda Jeffrey):** Have you concluded?

**Mr. Jamie Reaume:** Thank you. Sorry.

**The Chair (Mrs. Linda Jeffrey):** Our first speaker is Mr. Barrett.

**Mr. Toby Barrett:** Thank you, Jamie. With this new legislation, and certainly, you have the fairly recent legislation, the Clean Water Act and the nutrient management legislation—that was only a few years ago. You indicate cutting back on pesticide use by 50%, things like that. Is something missing in that? The Nutrient Management Act really was first developed to deal with farm issues, nutrients on farms. Is there something lacking in the Nutrient Management Act or the Clean Water Act that doesn't cover farms, as far as environmental degradation? I guess what I'm asking is, how would this new

piece of legislation impact farmers in the Holland Marsh or Bradford Marsh?

**Mr. Jamie Reaume:** In all honesty, Mr. Barrett, what it would boil down to is yet another compounded set of regulations that we're trying to understand. Nutrient management was originally deemed for livestock and moved into farming as a whole.

The Clean Water Act, which is out of essentially the same issue that cropped up, is about maintaining and correcting problems that have been existing for years, even decades. We'd like to see some acknowledgment that we are trying to do it, but as we move forward, it seems rather difficult that this is actually going to take place, unless we can show measurable differences ourselves. That's what we're trying to do: incorporate some research that shows that there is a measurable difference into what's taking place.

There is an awful lot of activity around the Holland Marsh right now. The canal project is one. We are looking at how to improve drainage. We're looking at how to improve the water. We actually agree with the Phoslock and would like to see it moved one step further by having almost a sluice or a damming system before it enters into Lake Simcoe, for the assurance not only for our farmers, but also for the people using the Lake Simcoe watershed, that we are doing everything that we can with the best of our abilities to clean up a situation that has, as I indicated, been a best management practice for years.

Unfortunately, the downfall may be that we'll look at having to absorb the costs again for a societal good. What we're trying to do is make sure that if it is a societal good, that we're doing the best that we can for it.

**The Chair (Mrs. Linda Jeffrey):** Ms. DiNovo.

**Ms. Cheri DiNovo:** Thank you for the presentation. I have no questions.

**The Chair (Mrs. Linda Jeffrey):** Mrs. Mitchell.

**Mrs. Carol Mitchell:** Hi, Jamie. Thank you for your presentation. I have a couple of questions. When you talk about the Holland Marsh, the salad bowl of Ontario, are you looking for a branding exercise? Is that what you were thinking of?

**Mr. Jamie Reaume:** Actually, we've already branded the marsh.

**Mrs. Carol Mitchell:** I thought so. Are you looking for an expansion of that, then?

**Mr. Jamie Reaume:** No. If I may have one minute, Madam Chair?

**The Chair (Mrs. Linda Jeffrey):** Yes.

**Mr. Jamie Reaume:** The Holland Marsh association came about because we are trying to brand the Holland Marsh. We have this mythological location located north of Toronto that exists on no map of Ontario. What we've done is we've decided to brand products out of the Holland Marsh to provide consumers with a local assurance that they are getting safe, healthy, fresh, nutritious products. All the products that come out of the Holland Marsh, and that would be the muck crops and some of the highlands that are surrounding it, will be branded under this logo so that they know it's going to exist. It's



called "Holland Marsh Gold." We've already put that in place.

What we're trying to do is work on behalf of the farmers up there who for years have been, at best—I want to say "disjointed," but that's probably not the right word; "disorganized" is maybe a better word—where it's easy to pick them off. And that's what we've tried to do: work collectively for the best benefits of farmers. That's what we're attempting to do. The branding is just part of what we're looking at.

**Mrs. Carol Mitchell:** So would the environmental farm plans be an appropriate vehicle to address decreasing the phosphorus load?

**Mr. Jamie Reaume:** Actually, the project that we're working on is an innovative one, because we're working with both the University of Guelph and OMAFRA. We are looking at being able to not just extend the farm plan but go beyond the farm plan. One of the things that we're looking for—in future it would be under the Growing Forward document—is tapping into their environmental pillar. Most people aren't aware, when you drive through the marsh, that the land itself is of value, so everything is situated in the very front of the properties. We're going to attempt to clean up the entire marsh, because it's not just the look, the aesthetics, but also because we'd like to see the farmers have their properties clean and clear. Some of the municipal regulations don't allow them to be able to stack, store and get rid of unwanted junk, shall we say, in an easily accessible manner. So we're going to be

doing that as well, and that plays in with what the Lake Simcoe cleanup is about.

**Mrs. Carol Mitchell:** If you're the salad bowl, we're the bread basket in my riding.

**Mr. Jamie Reaume:** Oh, we could debate that one, because it—

**The Chair (Mrs. Linda Jeffrey):** No arguing with the witness.

**Mr. Jamie Reaume:** It was a good year.

**The Chair (Mrs. Linda Jeffrey):** Thank you very much, Mr. Reaume. We appreciate your being here today.

**Mr. Jamie Reaume:** Thank you so much.

**The Chair (Mrs. Linda Jeffrey):** Committee, this concludes the public portion of our hearings. Just to remind you, you have a summary of recommendations in front of you. You also have a few letters that were received during the course of the last couple of days, as well as some materials from the Trent-Severn Waterway group that we asked for some background material on. I would remind members that for administrative purposes, the amendments must be filed by Thursday, November 20, and that this committee will meet for the purpose of clause-by-clause consideration of the bill on Monday, November 24.

We're adjourned.

*The committee adjourned at 1748.*



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First Session, 39<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 39<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 24 November 2008

# Journal des débats (Hansard)

Lundi 24 novembre 2008

## Standing Committee on General Government

Lake Simcoe Protection Act, 2008

## Comité permanent des affaires gouvernementales

Loi de 2008 sur la protection  
du lac Simcoe

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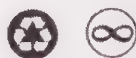
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Monday 24 November 2008

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Lundi 24 novembre 2008

*The committee met at 1404 in room 151.*

## LAKE SIMCOE PROTECTION ACT, 2008

LOI DE 2008 SUR LA PROTECTION  
DU LAC SIMCOE

Consideration of Bill 99, An Act to protect and restore the ecological health of the Lake Simcoe watershed and to amend the Ontario Water Resources Act in respect of water quality trading / Projet de loi 99, Loi visant à protéger et à rétablir la santé écologique du bassin hydrographique du lac Simcoe et à modifier la Loi sur les ressources en eau de l'Ontario en ce qui concerne un système d'échange axé sur la qualité de l'eau.

**The Chair (Mrs. Linda Jeffrey):** Bringing the committee to order, this is the Standing Committee on General Government. We're here to consider Bill 99, An Act to protect and restore the ecological health of the Lake Simcoe watershed and to amend the Ontario Water Resources Act in respect of water quality trading. We're beginning clause-by-clause consideration.

Section 1: are there any comments or questions on this section? Seeing none, all those in favour of section 1? Thank you; that's carried.

Section 2: The first amendment is an NDP amendment. I understand Mr. Tabuns has laryngitis, so I have agreed to read his motions into the record and then he can whisper any comments he might have after that.

**Mr. Peter Tabuns:** I'll whisper into your ear.

**The Chair (Mrs. Linda Jeffrey):** I move that the definition of "designated policy" in section 2 of the bill be struck out and the following substituted:

"designated policy" means a policy set out in the Lake Simcoe protection plan under paragraph 5 of subsection 5(1), other than a policy that is not relevant to the purpose of this act and the objectives of the plan; ('politique désignée')."

**Mr. Peter Tabuns:** Very simply, Madam Chair and colleagues, the plan provides strong protection by giving legal effect to designated policies but doesn't afford protection to other policies. This is out of line with what has been done with the Oak Ridges Moraine Act and the Greenbelt Act. So I urge you to support my amendment.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Bill Mauro:** What did he say?

**Mr. Peter Tabuns:** What did I say? Oh, no.

**Mr. Bill Mauro:** Can you repeat that?

**Mr. Peter Tabuns:** You're a brutal man, Mr. Mauro.

**Mr. Bill Mauro:** I feel like I should whisper back.

**The Chair (Mrs. Linda Jeffrey):** Can I stop the banter back and forth. My guess is that this is going to be really challenging for Hansard to capture.

**Mr. Bill Mauro:** It is.

**The Chair (Mrs. Linda Jeffrey):** Any of the dialogue going back and forth afterwards needs to be pretty clear.

Mr. Flynn, you have the floor.

**Mr. Kevin Daniel Flynn:** We won't be supporting this motion, unfortunately. Our point here is that all policies in the plan would be relevant to the purpose of the act and the objectives of the plan. If this motion were accepted, it would remove the flexibility to decide which policies should be designated. So we would not support this.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Peter Tabuns:** Recorded vote.

## Ayes

Tabuns.

## Nays

Flynn, Kular, Mauro, Mitchell, Oraziotti.

**The Chair (Mrs. Linda Jeffrey):** That motion is lost.

In case any of you have arrived late, I am reading the NDP motions into the record to save Mr. Tabuns's voice. He is struggling with laryngitis today.

I move that clause (a) of the definition of "Lake Simcoe watershed" in section 2 of the bill be amended by striking out "Lake Simcoe" at the beginning and substituting "Lake Couchiching, Lake Simcoe".

**Mr. Peter Tabuns:** I would simply argue that they're all part of one watershed and that it was an unfortunate omission that Lake Couchiching wasn't included in the first place.

**Mr. Kevin Daniel Flynn:** Our point would be contrary to that. We believe that Lake Simcoe is ecologically distinct and should be treated as such.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Peter Tabuns:** Recorded vote.



**Ayes**

Tabuns.

**Nays**

Flynn, Kular, Mauro, Mitchell, Orazietti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

Shall section 2 carry? All those in favour? All those opposed? That's carried.

Section 3 has no amendments. Shall section 3 carry? All those in favour? All those opposed? That's carried.

Section 4: a PC motion. Ms. Savoline.

**Mrs. Joyce Savoline:** I would ask if you could stand this down. Our critic, MPP Barrett, is on University Avenue in a parking lot because of the paving that is going on there, but he will be here very soon, and Ms. Munro is on her way. They've been subbed in.

**The Chair (Mrs. Linda Jeffrey):** I understand that if the committee agrees, you can move amendments.

*Interjection.*

**The Chair (Mrs. Linda Jeffrey):** You can stand it down.

**Mrs. Joyce Savoline:** Okay.

**The Chair (Mrs. Linda Jeffrey):** We'll stand it down.

**Mrs. Joyce Savoline:** Thank you.

**The Chair (Mrs. Linda Jeffrey):** We'll deal with the other amendments in this section and come back to it when Mr. Barrett is here.

Government motion: Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I move that subclause 4(j)(ii) of the bill be amended by striking out "the Clean Water Act, 2006" and substituting "the Clean Water Act, 2006, the Conservation Authorities Act".

The reason for this is that it would respond to a concern that was raised by Conservation Ontario, and makes it clear that the amendment is designed with one of the objectives in mind to build on the protections that are already in place in the current Conservation Authorities Act.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

Seeing none, all those in favour of the amendment? All those opposed? That's carried.

Government motion: Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I move that clause 4(k) of the bill be amended by striking out "prescribed by regulations" and substituting "set out in the Lake Simcoe protection plan".

By passing this amendment, we remove the need for another regulation, and it's subject to the plan, and the plan amendment to add objectives is subject to approval by cabinet. It would also be subject to the notice and the public consultation requirements that are specified in the bill.

1410

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's carried.

We'll move on to section 5; it's an NDP motion. Mr. Tabuns, I'll read this out for you.

I move that paragraph 3 of subsection 5(1) of the bill be amended by striking out "existing significant threats and potential significant threats" and substituting "existing threats and potential threats."

**Mr. Peter Tabuns:** The wording, as currently set forth in the bill, I think, unnecessarily restricts the act. There may well be threats that could be dismissed simply because they were not defined as significant. I think, to ensure the bill is strong enough, the word "significant" has to be taken out.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Kevin Daniel Flynn:** We will not be supporting this amendment. Our point is that it would be impractical to include all threats in the plan, but what we would like to do is keep "significant threats," which would allow the higher-priority threats to be addressed; in the same way of thinking as my friend, that rather than bog the system down with insignificant threats, you actually deal with the significant and the higher-priority threats.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Peter Tabuns:** Recorded vote.

**Ayes**

Tabuns.

**Nays**

Flynn, Kular, Mauro, Mitchell, Orazietti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

Next, a government motion.

**Mr. Kevin Daniel Flynn:** I move that paragraph 6 of subsection 5(1) of the bill be amended by striking out "priorities" and substituting "principles and priorities".

This is a suggestion that we heard from our stakeholder advisory committee. The bill already requires that the plan specify the priorities that guided the development of the plan, and it responds to those stakeholders who came forward and would like to see the principles specified. For example, the Lake Watch Society and the North East Sutton Ratepayers Association also recommended including the precautionary "principle."

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's carried.

The next motion is Mr. Tabuns's.

I move that paragraph 11 of the subsection 5(1) of the bill be amended by striking out "financing" and substituting "ensuring adequate and sustainable financing for."



**Mr. Peter Tabuns:** We heard repeatedly from deputants that there was inadequate enforcement of the existing legislation, and I think we have to specify in this legislation that there be the resources put in place to actually enforce this act.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Kevin Daniel Flynn:** We would not be supportive of this amendment. Our point is that by definition, a strategy for financing a plan should be adequate and sustainable whether specifically stated or not and that public consultation on the draft plan should provide for further input as to whether the financial strategy required is indeed adequate.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Peter Tabuns:** Recorded vote.

**Ayes**

Tabuns.

**Nays**

Flynn, Kular, Mauro, Mitchell, Oraziatti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

We have a PC motion, 7.1. Mr. Barrett.

Would you like me to go to the next amendment while you sort this one out? Would that be easier?

We'll come back to you, Mr. Barrett? Or are you ready to do this one? Do you want me to go to the next amendment and then I can come back to you?

**Mr. Toby Barrett:** Yes, that would be fine.

**The Chair (Mrs. Linda Jeffrey):** The next amendment is an NDP amendment. I'll read it in for Mr. Tabuns.

I move that subsection 5(1) of the bill be amended by adding the following paragraph:

"11.1 A practical scheme to enforce the plan."

Mr. Tabuns.

**Mr. Peter Tabuns:** I think it speaks for itself.

**The Chair (Mrs. Linda Jeffrey):** Mr. Flynn.

**Mr. Kevin Daniel Flynn:** We won't be supporting it, although we do understand it. We believe that the plan is already enforced through other legislation: the Conservation Authorities Act, the Planning Act, and the Ontario Water Resources Act. We feel that a description in the plan is unnecessary. It's simply going to rehash the enforcement provisions associated with the other legislative regimes.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Peter Tabuns:** Recorded vote, please.

**Ayes**

Tabuns.

**Nays**

Flynn, Kular, Mauro, Mitchell, Oraziatti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

Going back to Mr. Barrett: Are you ready to do 7.1?

**Mr. Toby Barrett:** Yes. Thank you, Chair, for standing that down for a few minutes.

I move that paragraph 11 of subsection 5(1) of the bill be struck out and the following substituted:

"11. A strategy for financing the implementation of the plan that seeks to avoid reckless and unrestrained spending."

We feel it's important to have a clear and appropriate budget to pass this legislation. To do otherwise, we feel, is inappropriate and would perhaps set a precedent for further unrestrained spending.

**The Chair (Mrs. Linda Jeffrey):** Any comments or questions?

**Mr. Kevin Daniel Flynn:** We will not be supporting this. We already feel that the bill is broadly written to allow the flexibility that you need when drafting the contents of the plan. Paragraph 11 of subsection 5(1) already requires that the plan include a strategy for financing. When the time comes for the strategy for financing, we will be consulting with the public and with stakeholders, and one of the things we'll be consulting on is whether the financing strategy that's proposed is appropriate for the goals of the plan and the protection of the watershed itself.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

The next motion is a government motion. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I move that paragraph 2 of subsection 5(2) of the bill be amended by striking out "among municipalities and local boards" at the end and substituting "among municipalities, conservation authorities and other local boards".

This is fairly self-explanatory. This amendment would respond to a concern that has been raised by York region and the Lake Simcoe Region Conservation Authority. It helps to address those concerns we heard about overlap and duplication.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's carried.

The next motion is an NDP motion. I'll read it into the record.

I move that paragraph 5 of subsection 5(2) of the bill be struck out.

Mr. Tabuns.

**Mr. Peter Tabuns:** Very simply, local authorities should be allowed to exceed the standard set by the province, because, as I've argued on other bills, often the municipalities are willing to take the lead and break new ground politically in this province. If we prevent them from doing so, it's to our disadvantage.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Kevin Daniel Flynn:** We will not be supporting this either. It's a discretionary authority that's in the plan. The plan does not have to include such restrictive



policies. Consultation on the draft plan is going to allow stakeholders to comment on any proposed use of this provision. The greenbelt and the Oak Ridges moraine legislation currently include such a provision and the related plans use it quite narrowly. Retaining this provision, we believe, allows for flexibility. We're not supportive of the amendment.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Peter Tabuns:** Recorded vote.

#### Ayes

Tabuns.

#### Nays

Flynn, Kular, Mauro, Mitchell, Orazietti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

1420

Next, NDP motion. I'll read it into the record.

I move that section 5 of the bill be amended by adding the following subsection:

"Same

"(2.1) A policy referred to in paragraph 5 of subsection (1) that regulates or prohibits an activity may apply to any activity other than an activity for which all necessary permits, approvals and other instruments were obtained before December 6, 2007."

**Mr. Peter Tabuns:** Members of the committee, we heard from deputants. We heard from people talking about the large number of projects that is going to come forward which, if they come forward, will undermine the whole intent of this act. I urge you to support this amendment because if, in fact, you're going to save Lake Simcoe, you do have to go back to that December 2007 date. If you don't change the act as written, your intentions will be not be satisfied. You will not have the protection for the lake that you need and that this lake absolutely must have.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Kevin Daniel Flynn:** I understand what Mr. Tabuns is trying to get at and I think in a conceptual way we agree. We are not going to support the motion that's on the floor right now. However, we are bringing in a motion subsequent to this, 11.1, that I think will address the concerns that Mr. Tabuns has raised. We simply believe that the amendment that's on the floor is far too narrow.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Peter Tabuns:** Recorded vote.

#### Ayes

Tabuns.

#### Nays

Flynn, Kular, Mauro, Mitchell, Munro, Orazietti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

Next motion, a government motion.

**Mr. Kevin Daniel Flynn:** I move that section 5 of the bill be amended by adding the following subsection:

"Same

"(2.1) For greater certainty, a policy referred to in paragraph 5 of subsection (1) that applies to an activity may apply even if some or all permits, approvals and other instruments necessary to engage in the activity were obtained before the policy took effect."

The bill, we believe, has already provided the plan with the authority to apply in an activity regardless of the date when the approvals for the activity had been obtained. For instance, if an activity had some of its planning approvals, but not all of its approvals, subsection 6(1) of the bill provides that after the plan comes into effect, subsequent decisions that are made under the Planning Act would be required to conform with the designated policies of the plan. We believe it was in there already; however, for the purposes of clarity, we wanted to make it extremely clear, and that's why we're proposing this amendment.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's carried.

Next motion, I'll read into the record for Mr. Tabuns.

**Mr. Peter Tabuns:** Withdrawn, because the initial was defeated.

**The Chair (Mrs. Linda Jeffrey):** It's being withdrawn. Item 12 has been withdrawn.

The next motion is a government motion.

**Mr. Kevin Daniel Flynn:** I move that subsection 5(4) of the bill be amended by striking out "may designate" and substituting "may identify".

It's a technical amendment, Madam Chair. The amendment does not change the meaning of the provision at all. The reason for the amendment is to confuse—is to avoid confusion—

*Interjections.*

**Mr. Kevin Daniel Flynn:** It's all this whispering—to avoid confusion with the use of the word "designated" as it is used in referring to designated policies—under line "designated" in section 6 of the bill. It just makes it clear.

**The Chair (Mrs. Linda Jeffrey):** Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Next motion, Mr. Tabuns, I'll read into the record for you.

I move that section 5 of the bill be amended by adding the following subsection:

"Lake Simcoe science advisory committee recommendations

"(5) The Lake Simcoe protection plan shall conform to the recommendations contained in the report of the Lake Simcoe science advisory committee dated July 7, 2008



and entitled 'Lake Simcoe and its Watershed: Report to the Minister of the Environment'".

**Mr. Peter Tabuns:** It's fairly straightforward from the people who came and spoke to us that if you don't follow the scientific evidence and the scientific recommendations, you won't protect the lake. This amendment should be in there to make sure that the lake is in fact protected.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Kevin Daniel Flynn:** We won't be supporting this, although I do understand the reasons for it. Our rationale is that it's already in there. The minister is preparing a draft Lake Simcoe protection plan for public consultation. This draft plan is being informed by the recommendations that are being made by the Lake Simcoe science advisory committee itself. The plan, as drafted and before you today, is based on science. The reports of the Lake Simcoe science advisory committee are available to the public on the Ministry of the Environment website as we speak. In addition, we plan to post this draft plan for broad public input.

**Mr. Toby Barrett:** I go along with the NDP on this one. I think if we're serious about cleaning up Lake Simcoe, we must heed the recommendations of the scientific community and look to them for guidance and expertise. We'll vote in favour of this one.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Kevin Daniel Flynn:** Only that we agree with the thought that's being expressed, but we don't believe that this is the way of doing it. This is unnecessary.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions?

**Mr. Peter Tabuns:** Recorded vote.

#### Ayes

Barrett, Munro, Tabuns.

#### Nays

Flynn, Kular, Mauro, Mitchell, Oraziatti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

Shall section 5, as amended, carry? All those in favour? All those opposed? That's carried.

We're going to return to the motion in section 4. Mr. Barrett, it's 2.1. You held this one off—

**Mr. Toby Barrett:** Yes, thank you for that.

I move that section 4 of the bill be amended by adding the following clause:

"(a.1) to promote environmentally sustainable development in the Lake Simcoe watershed;"

The goal here is to try to enshrine in this legislation a situation where we can promote sustainable development, allow for growth—we know that growth is coming anyway to this area, an area that we're told is going to

double in population in the next 25 years or so—and at the same time protect the environment.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Kevin Daniel Flynn:** As with previous comments, we support the idea behind the amendment but believe that it's unnecessary. The proposed Lake Simcoe Protection Act is designed to build on frameworks already established by other provincial plans, and when you combine the Lake Simcoe Protection Act with those others, it's going to establish the conditions for sustainable development. That, we believe, negates the need to reference sustainable development as an objective of the plan itself. For example, if you look to the greenbelt, Places to Grow, the Planning Act or the provincial policy statement, these all address the issues of environmentally sustainable development. The proposed Lake Simcoe plan would complement and build on these.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? All those in favour of the motion? All those opposed? That's lost.

Shall section 4, as amended, carry? All those in favour? All those opposed? That's carried.

Section 6 has no amendments. Shall section 6 carry? All those in favour? All those opposed? That's carried.

Section 7 has an NDP motion; I'll read that into the record.

**Mr. Peter Tabuns:** Withdrawn.

**The Chair (Mrs. Linda Jeffrey):** Thank you.

Shall section 7 carry? All those in favour? All those opposed? That's carried.

Sections 8, 9, and 10 have no changes to them. Shall those sections carry? All in favour? All opposed? They're carried.

Section 11 has a government motion. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I move that section 11 of the bill be amended by striking out "designated" and substituting "identified".

This is a technical amendment very similar to one I spoke to a few amendments ago. It doesn't change the intent of the bill at all.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Seeing none, shall it carry? All those in favour? All those opposed? That's carried.

Shall section 11, as amended, carry? All those in favour? All those opposed? That's carried.

New section. Mr. Barrett—sorry, is there some confusion?

1430

**Mr. Kevin Daniel Flynn:** We've still got one to deal with on section 11.

**The Chair (Mrs. Linda Jeffrey):** The 11.1 is a PC motion. Mr. Barrett.

**Mr. Toby Barrett:** What page is that on, please?

**The Chair (Mrs. Linda Jeffrey):** Page 16.1.

**Mr. Toby Barrett:** We move that the bill be amended by adding the following section:

"Annual financial reports



"11.1 The minister shall annually prepare and make available to the public a report on the costs of implementing the Lake Simcoe protection plan."

Give me a moment to see if I have any notes on that. We attempted to do this on Sunday and I have no notes on that.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions on this item?

**Mr. Kevin Daniel Flynn:** Yes. We understand the intent behind this, but we aren't supportive. We believe that it's already included in the bill.

**The Chair (Mrs. Linda Jeffrey):** Mr. Barrett, do you have any further comments or questions on this item?

**Mr. Toby Barrett:** No, other than I think it would be very important to find out what these various measures cost and, even more importantly, to let people know about it.

**Mr. Kevin Daniel Flynn:** Just so that we're clear, that will take place. All these costs will be available to the public and will be issued in report form. All the costs will be available to the public.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, shall the amendment carry? All those in favour? All those opposed? That's lost.

The next motion is in section 12 and it is item 17. I'll read it into record for you, Mr. Tabuns.

I move that subsection 12(2) of the bill be amended by striking out "from time to time" in the portion before clause (a) and substituting "by the fifth anniversary of the date the plan takes effect and at least once every three years after that anniversary".

**Mr. Peter Tabuns:** I just think you have to set regular periods within which the reporting is carried out.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Kevin Daniel Flynn:** We would not be supportive of this because we believe that we've brought an amendment that's quite similar two amendments further on, I think, as motion 19 of our agenda, and would be quite happy at the time—were Mr. Tabuns prepared to move that amendment, we would be supportive of that. But we would not be supportive of the current amendment. We think ours deals more in scientific trends which can be determined over a period of five years, but I think we're on the same track here.

**The Chair (Mrs. Linda Jeffrey):** Mr. Tabuns, what would you like to do?

**Mr. Peter Tabuns:** Vote on it, then go from there.

**The Chair (Mrs. Linda Jeffrey):** Okay, so we're going to proceed with this motion and vote on it.

**Mr. Peter Tabuns:** Which I suspect will be voted down.

**The Chair (Mrs. Linda Jeffrey):** Okay. You're prepared to have it voted down.

**Mr. Toby Barrett:** Our view on this as well is that it better enables one to monitor what's going on and evaluate and by the same token ensure transparency.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

The next motion is a PC motion. I understand from leg counsel that it is virtually the same, so I'm going to rule it out of order. But I can let you read it into the record.

**Mr. Toby Barrett:** Thank you for that. This motion is found on page 18 and this would explain why we voted in favour of the NDP motion previously. Again, for the same reasons and based on the premise that it would help establish transparency in the implementation of this bill and—

**The Chair (Mrs. Linda Jeffrey):** Mr. Barrett, I believe you have to read it in and then give the explanation.

**Mr. Toby Barrett:** Sorry about that.

**The Chair (Mrs. Linda Jeffrey):** I sort of cut you off before, I did the wrong thing and then—

**Mr. Toby Barrett:** Page 18.

I move that subsection 12(2) of the bill be amended by striking out "from time to time" in the portion before clause (a) and substituting "not later than the fifth anniversary of the date the Lake Simcoe protection plan takes effect and at least once every three years after that anniversary".

**The Chair (Mrs. Linda Jeffrey):** I'm going to rule that out of order.

The next motion is a government motion. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Mr. Tabuns might want to move this—but you can read it in his voice.

**Mr. Peter Tabuns:** You have a great voice.

**The Chair (Mrs. Linda Jeffrey):** It's sort of like "Who's on first?" here.

I move that subsection 12(2) of the bill be amended by striking out "from time to time" in the portion before clause (a) and substituting "at least once every five years".

Mr. Tabuns is moving this motion. Any comments or questions?

**Mr. Kevin Daniel Flynn:** We would support that. We think it may put us all on the same page, finally, on at least one amendment. We heard from Campaign Lake Simcoe, we heard from our stakeholders, the science advisory committee and others that the current language in the bill, "from time to time," was simply too vague. This is much more specific, much more scientific. The current wording in the bill, as I said, is "from time to time." The minister is required to prepare annual reports, in any event, but this is very, very clear, and I think it's more on track with the recommendations that are coming from the science community.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Toby Barrett:** Would this government motion not then essentially allow for longer intervals between reporting?

**Mr. Kevin Daniel Flynn:** The current bill says "from time to time." What we're saying is that at a bare



minimum it would be every five years—that you could not go more than five years without reporting.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's carried.

Shall section 12, as amended, carry? All those in favour? All those opposed? That's carried.

Section 13, motion 20: I'll read it into the record for Mr. Tabuns.

I move that subsection 13(1) of the bill be amended by striking out “sections 14, 15 and 16” at the end and substituting “sections 15 and 16”.

Mr. Tabuns.

**Mr. Peter Tabuns:** Very simply, the decision to amend the plan should not be given over to an unelected hearing officer. It should remain in the hands of the Minister of the Environment. I think the direction that's being taken in this part of the act is very, very problematic.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Kevin Daniel Flynn:** We would not support this. Our understanding is that, currently, if a hearing were to be held, a hearing officer would provide the recommendations to the minister regarding proposed amendments to the Lake Simcoe protection plan, but it's very clear that the hearing officer himself or herself would not have the authority to amend the plan.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Peter Tabuns:** Recorded vote.

**Ayes**

Tabuns.

**Nays**

Barrett, Flynn, Kular, Mauro, Mitchell, Munro, Oraziotti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

The next motion is a PC motion: Mr. Barrett, 20.1.

**Mr. Toby Barrett:** I move that section 13 of the bill be amended by adding the following subsection:

“Public consultation

“(4.1) The notice required by clause (4)(c) shall provide members of the public with an adequate opportunity to be consulted on the proposed amendment.”

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Sorry, Mr. Barrett, did I cut you off? Did you want to make comments?

**Mr. Toby Barrett:** This whole process to protect Lake Simcoe, we feel, has not received proper consultation. I felt the hearings were rushed; I felt this weekend was rushed, personally. We're concerned that the government has not done sufficient research to have the impact with this legislation, if it was passed.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

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**Mr. Kevin Daniel Flynn:** Quite to the contrary, we believe this has been an excellent exercise in consultation with the public—perhaps an example for others.

The amendment, we believe, is unnecessary as the bill, as it is before us, stipulates that proposed amendments to the plan must be posted on the Environmental Registry, for a duration to be specified by the minister. It's a normal practice for the ministries anyway, to consult with the public and solicit comments on proposals during those postings on the EBR.

**The Chair (Mrs. Linda Jeffrey):** Any further comments? Mr. Barrett.

**Mr. Toby Barrett:** Just further to what I was saying earlier, the deadline for amendments was something like 22 hours after the last presenter testified in this room. The Hansard had not been published for that day before the deadline passed, as I understand. This was problematic. I know it was problematic for staff working on this. I know you used the term “excellent,” but this process has been rushed.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I don't sit on the subcommittee. There's a member from each party on the subcommittee that establishes these rules. I can only imagine there was somebody there from the Conservative Party when this decision was made.

**Mr. Toby Barrett:** There would have been somebody on the subcommittee from the—

**The Chair (Mrs. Linda Jeffrey):** Committee, can I just ask before you get this debate going, if you want to speak, at least look at me. Then I can identify you and then broadcast will turn you on; otherwise you have no microphone.

Mr. Barrett, you still have the floor.

**Mr. Toby Barrett:** Yes, the government member is correct, there was somebody from the opposition on that subcommittee.

**The Chair (Mrs. Linda Jeffrey):** Mrs. Mitchell?

**Mrs. Carol Mitchell:** As a member on the subcommittee, I do want to reinforce that all parties were present when we agreed upon the dates of hearings and the time frames that each target would have to be met. It was an agreement that was reached by the committee, and then the recommendations came forward, which were read into the record. This has been something that has been very public.

I would add as well that there were three days set aside for public hearings and only two of those days were required.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions on the amendment? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Next government motion. Mr. Flynn.



**Mr. Kevin Daniel Flynn:** I move that section 13 of the bill be amended by adding the following subsection:

“Typographical errors, etc.

“(6) Subsection (4) does not apply to an amendment that is made to correct a clerical, grammatical or typographical error.”

It’s just a technical amendment that I think is self-explanatory.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Mr. Barrett.

**Mr. Toby Barrett:** Obviously, it does make sense to have reports and amendments—to avoid going through dealing with these grammatical, typographical or any clerical errors and cut down on the costs. So that makes sense at this end.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That’s carried.

Shall section 13, as amended, carry? All those in favour? All those opposed? That’s carried.

Section 14: We have a notice in here. Mr. Tabuns, would you like me to read it into the record? Then I’m going to rule on it.

**Mr. Peter Tabuns:** Yes, please.

**The Chair (Mrs. Linda Jeffrey):** The NDP recommends voting against section 14 of the bill.

I’m going to rule this out of order.

Shall section 14 carry?

**Mr. Peter Tabuns:** Recorded vote.

#### Ayes

Flynn, Kular, Mauro, Mitchell, Oraziatti.

#### Nays

Tabuns.

**The Chair (Mrs. Linda Jeffrey):** Section 14 is carried.

Section 15 has an NDP motion. I’ll read it into the record—

**Mr. Peter Tabuns:** Withdrawn.

**The Chair (Mrs. Linda Jeffrey):** Withdrawn.

Shall section 15 carry? All those in favour? All those opposed? That’s carried.

Section 16, which is motion 24. Is it withdrawn?

**Mr. Peter Tabuns:** Withdrawn.

**The Chair (Mrs. Linda Jeffrey):** Amendment 24 has been withdrawn. Shall section 16 carry? All those in favour? All those opposed? That’s carried.

Section 17 has no amendments. Shall it carry? All those in favour? All those opposed? It’s carried.

Section 18—

**Mr. Peter Tabuns:** Withdrawn.

**The Chair (Mrs. Linda Jeffrey):** —has been withdrawn.

**Mr. Peter Tabuns:** Withdrawn.

**The Chair (Mrs. Linda Jeffrey):** Number 25 has been withdrawn. How about number 26, Mr. Tabuns? Do you want me to read it in?

**Mr. Peter Tabuns:** Yes, please.

**The Chair (Mrs. Linda Jeffrey):** This is motion 26, if you’re following along.

I move that subsection 18(2) of the bill be amended by adding the following paragraphs:

“1.1 Publish reports on the environmental conditions of the Lake Simcoe watershed on the Environmental Registry established under section 5 of the Environmental Bill of Rights, 1993.

“1.2 Publish all advice provided to the minister under paragraph 1 on the Environmental Registry established under section 5 of the Environmental Bill of Rights, 1993.”

Mr. Tabuns.

**Mr. Peter Tabuns:** I think it’s a question of transparency, of public accountability. I think this would advance the purpose of the act.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Mr. Flynn.

**Mr. Kevin Daniel Flynn:** We agree with transparency and with public accountability, and we believe that we already have it covered off in section 12 of the bill. The minister has to prepare annual reports, among other things. These annual reports must include a summary of the advice that the minister has already obtained from the Lake Simcoe science committee in that year. The minister’s also required to prepare reports once every five years, as a result of what we did with our—or Mr. Tabuns’s motion 19.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions?

**Mr. Peter Tabuns:** Recorded vote.

#### Ayes

Tabuns.

#### Nays

Flynn, Kular, Mauro, Mitchell, Oraziatti.

**The Chair (Mrs. Linda Jeffrey):** That’s lost. Government motion. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I move that paragraph 2 of subsection 18(2) of the bill be amended by adding the following subparagraphs:

“iii. proposed amendments to the Lake Simcoe protection plan,

“iv. proposed regulations under this act,

“v. proposed regulations under subsection 75(1.7) of the Ontario Water Resources Act.”

This amendment speaks specifically to a suggestion that was made by the stakeholder and science advisory committee. It emphasizes clearly that scientific advice should be a key consideration in developing the regulations and policies and leaves no doubt, I hope, in



anybody's mind after this is hopefully successful that this function is a function that's expected of the science committee and they would be asked to undertake it.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Seeing none, all those in favour of the motion?

**Mr. Kevin Daniel Flynn:** I like it.

**The Chair (Mrs. Linda Jeffrey):** I was just waiting; I didn't see any hands. All those opposed? That's carried.

Shall section 18, as amended, carry? All those in favour? All those opposed? That's carried.

Section 19. Are you moving the motion, Mr. Tabuns?

**Mr. Peter Tabuns:** Yes.

**The Chair (Mrs. Linda Jeffrey):** I'll read it into the record for you.

I move that section 19 of the bill be amended by adding the following subsection:

"Composition of committee

"(4.1) The members of the Lake Simcoe coordinating committee shall be appointed in accordance with the following rules:

"1. One third of the members must be persons recommended under subsection (4) who represent interests described in paragraphs 1, 2 and 3 of that subsection.

"2. One third of the members must be persons recommended under subsection (4) who represent interests described in paragraph 4 of that subsection.

"3. One third of the members must be persons recommended under subsection (4) who represent interests described in paragraphs 5 and 6 of that subsection."

Mr. Tabuns.

**Mr. Peter Tabuns:** The intent is simply to make sure there's balanced representation of interests on the committee.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Certainly it'll be the intent of the minister that we do end up with a balanced committee, that's for sure, but right now the bill, as drafted, already requires the minister to recommend persons who represent the following interests: municipalities in the watersheds, the prescribed areas; somebody from the Lake Simcoe Region Conservation Authority; the government of Ontario; public bodies; the agricultural sector; commercial-industrial sectors of the Lake Simcoe watershed, including small business interests; aboriginal communities that have a historic relationship with the Lake Simcoe watershed; other interests, in particular including environmental and other interests of the general public. We believe that the flexibility of the minister and the plan would be limited by passing this and are not supportive.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Peter Tabuns:** Recorded vote, please.

## Ayes

Tabuns.

## Nays

Barrett, Flynn, Kular, Mauro, Mitchell, Munro, Oraziatti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

Shall section 19 carry? All those in favour? All those opposed. That's carried.

Section 20, government motion. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I move that section 20 of the bill be struck out and the following substituted:

"Delegation by minister

"20(1) The minister may delegate in writing any of his or her powers or duties under this act to one or more public servants employed under part III of the Public Service of Ontario Act, 2006.

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"Exception

"(2) Subsection (1) does not apply to the minister's powers under subsection 15(1), except to the extent that those powers may be exercised to approve an amendment to the Lake Simcoe protection plan that is made to correct a clerical, grammatical or typographical error."

This is a technical amendment and would not change any policy intent.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's carried.

Shall section 20, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 21 through 25 have no amendments. Shall they carry? All those in favour? All those opposed? That's carried.

Section 26, motion 30. Mr. Tabuns, do you want me to read this into the record?

**Mr. Peter Tabuns:** Yes, please.

**The Chair (Mrs. Linda Jeffrey):** On behalf of Mr. Tabuns:

I move that section 26 of the bill be amended by adding the following subsection:

"Same

"(1.1) Without limiting the generality of clauses (1)(a) and (b), regulations may be made under those clauses with respect to residential redevelopments, resort developments, marinas, and sewers, watermains and other utilities, and regulations under clause (1)(b) may require persons to prepare and implement shoreline restoration plans."

Mr. Tabuns.

**Mr. Peter Tabuns:** Given all that's going on on the Lake Simcoe watershed, I think it's necessary to explicitly identify these projects so that they're more visible in the process of protecting of the lake.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Mr. Flynn.

**Mr. Kevin Daniel Flynn:** As before, I understand the intent. We'll be bringing in a motion, 30.1, which I think speaks to very similar issues. We think it accomplishes the same aim and intent and will help to clarify the



government's intent in this regard. Currently, we believe this amendment, as it's written, is unnecessary.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions?

**Mr. Peter Tabuns:** Recorded vote.

**Ayes**

Tabuns.

**Nays**

Flynn, Kular, Mauro, Mitchell, Oraziatti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

The next government motion. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I move that section 26 of the bill be amended by adding the following subsection:

"Application, cl. (1)(a)

"(1.1) For greater certainty, a regulation under clause (1)(a) may regulate or prohibit an activity even if some or all permits, approvals and other instruments necessary to engage in the activity were obtained before the regulation came into force."

As with my previous comments, we believe that the bill already provided the regulations with authority to apply to that activity. The intent of this amendment is to clarify that intent.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

NDP motion 31. Mr. Tabuns, do you want me to read that into the record?

**Mr. Peter Tabuns:** Yes, please.

**The Chair (Mrs. Linda Jeffrey):** I move that section 26 of the bill be amended by adding the following subsection:

"Same

"(1.2) A regulation under clause (1)(a) may regulate or prohibit any activity other than an activity for which all necessary permits, approvals and other instruments were obtained before December 6, 2007."

Mr. Tabuns.

**Mr. Peter Tabuns:** I've made the arguments previously.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Mr. Flynn.

**Mr. Kevin Daniel Flynn:** We won't be supporting this. In fact, we think that this would actually limit the authority as opposed to expanding it, and that's not what we want to see.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none—

**Mr. Peter Tabuns:** Recorded vote.

**Ayes**

Tabuns.

**Nays**

Flynn, Kular, Mauro, Mitchell, Oraziatti.

**The Chair (Mrs. Linda Jeffrey):** That's lost.

The next motion. Mr. Tabuns, would you like me to read it into the record?

**Mr. Peter Tabuns:** Yes, please.

**The Chair (Mrs. Linda Jeffrey):** I move that subsection 26(2) of the bill be amended by,

(a) striking out "adjacent or close to" in clause (a) and substituting "within 100 metres of";

(b) striking out "within, adjacent or close to" in clause (b) and substituting "within or within 100 metres of"; and

(c) striking out "within, adjacent or close to" in clause (c) and substituting "within or within 100 metres of".

Mr. Tabuns.

**Mr. Peter Tabuns:** We heard a large volume of evidence calling for the 100-metre riparian zone. I think the arguments are compelling and I think if you're going to protect the lake, you have to have this kind of buffer. I would ask the government to support the amendment.

**The Chair (Mrs. Linda Jeffrey):** Comments or questions? Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I think during all of the delegations we heard about the buffers—and I think that there was general agreement in their value. We believe that the current wording that exists right now in the subsection, "adjacent or close to," does not preclude a regulation applying to an area within 100 metres of the shoreline or an even greater distance if necessary. The current wording of this subsection allows greater flexibility, we believe, in the development of good shoreline regulations.

**The Chair (Mrs. Linda Jeffrey):** Mrs. Munro.

**Mrs. Julia Munro:** I would just like to add that I will not support this motion simply because of the restrictive nature of it. I think that there are places where it would be appropriate to have it considerably larger and others where it's not practical. Giving the bill the flexibility of "within, adjacent or close to" I think will allow for the people who are on-site to be able to look at what is best in the particular part of the shoreline.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Government motion. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I move that section 26 of the bill be amended by adding the following subsection:

"Permits

"(3.1) A regulation under clause (1)(a) that prohibits an activity may provide that the prohibition does not apply if the activity is engaged in in accordance"—I'm assuming that's good grammar, is it?

**The Chair (Mrs. Linda Jeffrey):** Yes. It's legal.

**Mr. Kevin Daniel Flynn:** Okay.

**The Chair (Mrs. Linda Jeffrey):** The lawyer's nodding, so it's legal.

**Mr. Kevin Daniel Flynn:** When you're smart, you can do anything, right?—"with a permit issued by a person or body specified by the regulations, and the regulations under that clause may,



“(a) govern the issuance, renewal, suspension and revocation of permits, including requiring payment of fees set by the person or body;

“(b) govern the contents of permits;

“(c) provide for and govern appeals from decisions to refuse to issue, refuse to renew, suspend or revoke permits;

“(d) for the purpose of the Conservation Authorities Act, deem a permit under this section to be permission required under section 28 of that act.”

The reason for that is that the current authority allows a regulation to regulate or prohibit activities in the shoreline areas within, adjacent or close to the tributaries and the wetlands, and require a person to do something to protect or restore the health of that lake. It's conceivable, however, that a regulation around an activity such as removal of a buffer adjacent to the lake would have straightforward rules, subject to limited exemptions that would be specified in the regulations to follow. There may be circumstances, however, where an activity that requires regulation is better suited to a permit system.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's carried.

The next government motion. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I move that subsection 26(37) of the bill be amended by striking out “a provision of a regulation or instrument” and substituting “a provision of a regulation, bylaw or instrument”.

This relates specifically to subsection 26(37), which states that where there is a conflict between a shoreline protection regulation and an instrument, the provision that provides the greatest protection to the ecological health of the Lake Simcoe watershed is the one that prevails.

**The Chair (Mrs. Linda Jeffrey):** Any further comments or questions? Mr. Barrett.

**Mr. Toby Barrett:** I guess our concern, by adding the word “bylaw,” is, is this limiting the freedom of municipalities? Does this refer to a municipal bylaw?

**Mr. Kevin Daniel Flynn:** The only bylaws I know that exist—I'm trying to think who else might have bylaws. I guess corporations have bylaws, but that's not what we're speaking about here. The only bylaws, I think—

**The Chair (Mrs. Linda Jeffrey):** Mr. Flynn, would you like anybody from the ministry to assist you with this answer? You can.

**Mr. Kevin Daniel Flynn:** Yes, if somebody might want to come forward.

**The Chair (Mrs. Linda Jeffrey):** Could you identify yourself for Hansard, please, before you speak.

**Mr. James Flagal:** My name is James Flagal, and I'm a lawyer with the Ministry of the Environment, legal services branch. There's a conflict provision in section 26 of the bill and it simply provides that in cases of a conflict, whatever provision is most protective of the ecological health of Lake Simcoe prevails. The one instrument that was not mentioned there was bylaw, so this is just adding the reference to bylaw. So if there is a

conflict, if the bylaw provision is more protective, then the bylaw provision would prevail. However, if the shoreline regulation is more protective, then the shoreline regulation would prevail. It's whatever's more protective.

**The Chair (Mrs. Linda Jeffrey):** Any further questions or comments? Seeing none, thank you very much.

All those in favour of the amendment? All those opposed? That's carried.

Shall section 26, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 27 through 29 have no amendments. Shall they carry? All in favour? All opposed? That's carried.

Section 30. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** I move that section 30 of the bill be amended by adding the following subsection to section 75 of the Ontario Water Resources Act:

“Same, application to persons

“(1.7.1) Persons prescribed by a regulation made under clause (1.7)(c) need not be located in an area prescribed under clause (1.7)(a).”

This amendment would give greater flexibility to the regulations that govern the water quality trading. It would allow the area to which trading applies to be described on a watershed basis, such as the Lake Simcoe watershed in this case, but also authorize credits or offsets to be created by persons who are located outside of that area or watershed. For example, a feasibility report on water quality trading in the Lake Simcoe watershed may find that persons to the west of the watershed boundary proper should be encouraged to create credits or offsets by taking actions to reduce the atmospheric loadings of phosphorus to the lake. This authority would allow the system to be designed with the flexibility so that they can give recognition to such beneficial projects that are occurring outside the watershed but are actually impacting in a positive way on the watershed.

**The Chair (Mrs. Linda Jeffrey):** Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Barrett, did you want to comment on section 30?

**Mr. Toby Barrett:** No, we withdraw.

**The Chair (Mrs. Linda Jeffrey):** Thank you.

Shall section 30 as amended carry? All those in favour? All those opposed? That's carried.

Sections 31 and 32 have no amendments. Shall they carry? All in favour? All opposed? That's carried.

Shall the preamble of the bill carry? All in favour? All opposed? That's carried.

Shall the title of the bill carry? All those in favour? All those opposed? That's carried.

Shall Bill 99, as amended, carry? All those in favour? All those opposed? That's carried.

Shall I report the bill, as amended, to the House? All in favour? All opposed? That's carried.

Thank you, committee. This concludes our consideration of Bill 99, An Act to protect and restore the ecological health of the Lake Simcoe watershed. We're adjourned.

*The committee adjourned at 1504.*











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#### **Also taking part / Autres participants et participantes**

Mrs. Joyce Savoline (Burlington PC)  
Mr. James Flagal, counsel, legal services branch,  
Ministry of the Environment

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